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DE
JURE MAIESTATIS//
OR
POLITICAL TREATISE
OF
GOVERNMENT
(1628—30)
AND
THE LETTER-BOOK
OF
SIR JOHN ELIOT
(1625—1632)

NOW FOR THE FIRST TIME PRINTED: FROM THE
AUTHOR'S AND OTHER MSS. AT PORT ELIOT.

Edited, with Introduction, Fac-similes and Notes, etc.

BY THE
REV. ALEXANDER B. GROSART, LL.D., F.S.A.,
ST. GEORGE'S, BLACKBURN, LANCASHIRE.

IN TWO VOLUMES.

VOL. I.

INTRODUCTION—DE JURE MAIESTATIS—CHIEF THINGS, ETC.

✓ PRINTED FOR EARL ST. GERMAN'S AND
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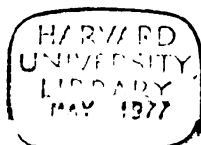
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(Vol. I, II.)



CHISWICK PRESS:—C. WHITTINGHAM AND CO., TOOKS COURT,
CHANCERY LANE.

TO
SAMUEL RAWSON GARDINER, ESQ., LL.D.

A
HISTORIAN OF ENGLAND,
SECOND TO NONE IN INTEGRITY AND THOROUGHNESS OF
RESEARCH; IN SOUNDNESS AND PERSPICACITY
OF JUDGMENT; IN JUDICIAL TEMPER IN
WEIGHING AND APPRAISING EVIDENCE;
AND IN LUCIDITY AND
STRENGTH OF STYLE:

I DEDICATE
THESE FINAL VOLUMES
OF
SIR JOHN ELIOT;
ASSURED THAT THEY (AS THE OTHERS) WILL BE
WELCOME TO HIM, AND THAT I MAY
THUS PLEASANTLY ASSOCIATE
OUR NAMES.

GRATEFULLY

ALEXANDER B. GROSART.

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53

**De Jure Maiestatis : or Political
Treatise of Government.**

(

De iure maiestatis

The first book is of maiesty in generall.

The term of mai^{ty} comprehend 2 thinges.
 Supremam. { power } Sovereignty in name. But
 honor }
 Supremam^{ty} power, is but an idle title as on
 the contrary absolute governing honor wth out
 the title of King (as in Augustus Iulianus
 Emperally and the rest of the Roman
 Emperors untill the Emperour Theodosius
 (who was the first of the Caesars that advised
 his power, wth the title of King & he heard
 of a Deader) and also in the Duke of
 Muscovy) give the right of ma^{ty}.

It is also an idle argument of the sworn
 enemies of Sovereign^{ty} mai^{ty} bring in
 examples of Titular Kings wth were Kings
 not in power, but in name, thereby to
 inferre the absolute authorities of
 absolute Monarchies.

videtur autem.

- ^b Enden. De iur. reg.
 Hottoman
 Brutus lib. 1. in dicit
 contra Tyrannos
 . Lottorius de iur. reg.
 m. reges authentic
 Indarum lib. 1.
 De abdicat. lib. 3.
- ^c as the Mithridatic
 war of the 1st. and 2d.
 under the Marcellus in
 the Lucidum. R.R.
 under the Epitaph.
 the 18. of Venice.



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Fac-simile of first page of De Jure Maiestatis	<i>to face title-page.</i>



INTRODUCTION.

THESE two volumes,—which complete the announced six volumes of Eliot MSS. printed for the first time,—call for no such full introduction as their predecessors, viz. :

I. THE MONARCHIE OF MAN : with 2 (steel) portraits, etc.

Vol. I. Introduction and Notes and Illustrations	pp. 206	} 1879.
Vol. II. The Treatise	pp. 227	

II. AN APOLOGY FOR SOCRATES and NEGOTIUM POSTERORUM :

Vol. I., Part I., with Introduction and Notes and Illustrations pp. xxvi ad 173.

Vol. II., Part II., and Additions from Port Eliot MSS., Notes and Illustrations, etc. pp. 201.

inasmuch as, on the one hand, *De Jure Maiestatis* is relatively short, and being well-arranged, readily taken in at a reading. But I have added at the close, an index of chief things, topics, words, names, etc., for after-consultations.

This Index will readily guide to points of special interest, instead of *Notes and Illustrations*. On the other hand, wherever required, 'The Letter-Book' has introductory words before the successive letters, and a few things slightly annotated at the close. The various biographical-historical works of JOHN FORSTER must be habitually consulted by the student-reader who would familiarize himself with the contests and rights and wrongs out of which *De Jure Maiestatis* sprang and the many eminent writers of the Letters of 'The Letter-Book.' But of Forster more anon.

I have now only to give an account of the MSS. herein reproduced with all painstaking integrity—

(a) DE JURE MAIESTATIS. Of this, FORSTER thus writes, in connection with a short letter from RICHARD JAMES, which will be found in its own place (Vol. II., pp. 66-7):—"And so leaving with the imprisoned philosopher that source of amusement [Lepsius, *de Constantiâ*], and with his heart blessing all Eliot's purposes, he rests his faithful servant.

Of one of those purposes, to which James's learning and sympathy, and the rare books at his command, very largely contributed, I have discovered that it occurred to Eliot at this time [1628]; that now first it began to take shape; and that the proper time and place for describing it will be here. In these earliest leisure days of imprisonment he projected a treatise which was found completely transcribed by him at his death, upon the right of majesty, or the principles and limits of kingly

power. It is in three books; occupying between two and three hundred closely written folio pages; and has elaborate marginal notes of extracts and citations from original authorities in nearly all the learned languages. These indeed overlay it to such an extent as in some degree to give it the character of having served as much for the entertainment of leisure as for display of the fruit and exercise of thought. One derives from it a prodigious impression of the variety of Eliot's scholarship and knowledge, and of the happy power he possessed of finding relief therein from suffering and sorrow, as Raleigh, in that very place, had done in the earlier time. He calls his Treatise, which remains still in manuscript at Port Eliot, *De Jure Maiestatis*; and in its first book, which consists of seven chapters, treats of majesty in general. My account will be necessarily brief; but will perhaps sufficiently express its character and tone, and, independently of an occasional vein of reflection and reference which is personally very interesting, its really striking claims as a piece of learned and philosophic dissertation."¹

As the Treatise itself will show, a good deal of this must be read *cum grano salis*. But unquestionably *De Jure Maiestatis* has "really striking claims as a piece of learned and philosophic dissertation." Indeed I go further: for its *motif* was a practical and living one. *De Jure Maiestatis*, in my judgment, reveals to us the limits and safeguards—very much those of to-day—with which Sir John Eliot and his

¹ Sir John Eliot: a Biography. Vol. II., p. 509.

fellows, had they been released and given opportunity, would have surrounded our English Monarchy. The treatise seems to me a Manifestation, or Declaration, or Mandatory, on ancient lines, by one well entitled to be the mouthpiece of the foremost and most patriotic men of the period. And surely it is infinitely pathetic to discover how loyal to the old English Monarchy *qua* Monarchy, Sir John Eliot was, and how it was preferred to any (even) ideal Republic. Rightly or wrongly, these men—Eliots, Hampdens, Pym, Fairfaxes, and Cromwell himself—were no Republicans. “The pity of it, the pity of it” that such Kings as the first James of England, and the first and second Charleses, and the fourth George, should have (mis)represented Monarchy; and right grand is it that to-day so true a woman and so judicial yet sympathetic a sovereign, is ours; of whom her illustrious Laureate wrote so finely long ago, and that needs no deduction now:—

——— “May you rule us long,

And leave us rulers of your blood
As noble till the latest day!
May children of our children say,
‘She wrought her people lasting good;
‘Her court was pure; her life serene;
God gave her peace; her land reposed;
A thousand claims to reverence closed
In her as Mother, Wife, and Queen;
‘And statesmen at her council met
Who knew the seasons when to take
Occasion by the hand, and make
The bounds of freedom wider yet

' By shaping some august decree,
Which kept her throne unshaken still,
Broad-based upon her people's will,
And compassed by the inviolate sea.'
(March, 1851).¹

FORSTER quotes a few 'purple patches.' On one of these (from the close of c. 3.), after he has related "strange stories of the deaths of Kings," in which the voice of the Creator had spoken to them, he observes that it occurs to him (Eliot) "to reflect that if Kings, when disposed to injustice, and endowed with power to inflict it, did but seriously think it possible that God might be reserving them to His own punishment, from Whom there was no appeal, against Whom there was no power, from Whose eyes they could not be hid, and Whose sight they could not shun—they would surely not take that liberty to abuse

¹ One has a feeling that even so clear-headed and strong-brained a man as Eliot had a superstitious idea of 'the King.' In his treatise he makes prodigious concessions of 'right' to 'Kings,' even to passing obliviousness of the kingdom's rights. Very much of this supra-sancto 'divinity,' was either theoretical or traditionary. None the less is it a factor to be reckoned in any study of the period. The sad stern actuality is that the Jameses and Charleses and others appropriated eagerly and to the full their 'rights' (so-called), but attenuated their duties and responsibilities consequent. Of course all such monarchic worship or worship of any form of civil or ecclesiastical government, is to-day an anachronism. But so long as sovereigns and nobles exercise their 'rights' in accord with righteousness, 'the people' (of our country, at least) will be slow to change the ancient monarchy and nobility. Otherwise, and soon, abolition and unconsecration are inevitable.

their power as now they doe. For as winds when they blow most boysterously, then use they to cease most suddenly, soe mortal men when they exalt themselves most proudly, then are they to be neerest their downfall" And then he asks, "Did it occur to Eliot, as he wrote, that even such a fate might be then preparing for the old proud fabric of the English monarchy?" (p. 510). Indubitably Sir John Eliot discerned "the signs of the times," and even earlier than this had his own sad forebodings concerning Charles I.'s career.

Again he writes: "One of his subtlest and best expositions, is that of the way in which the Roman institutions of patron and client are traced out in their affinity to the Saxon and Norman 'feudaries.' He shows clearly and justly the character of this relation; each bound to each by mutual good offices, and the obligation so created upon Kings" (p. 510).

Further: "Incidental to this, Eliot has a masterly and powerful argument on the theme, that 'the very essence of feuds consists in services'" (p. 511).

By far the most noticeable feature of *De Jure Maiestatis* is the statement, on the one hand, with which B. I. c. 6 opens, against the *jus divinum*, and, on the other hand, of rebellion of subjects: both combined with an eloquent plea for permanence and stability of law as against the abuse of prerogative, real or alleged.

There are stinging words on 'Favorites' and regal deputing of rights 'to a subject' as contrasted with the necessary 'powers' of subjects in the legislature to 'make

laws.' There are similar pungent and penetrating protests as to the royal 'pardoning power.' Onward, "in thoughts that breathe and words that burn," there are prophet-like 'burdens' on the divine law that must be superior to all laws and Kings, and with undisguised (then) present-day application, thrilling and splendid protests against the degradation of royal right to 'confer nobility.'

One portion of the treatise (Book II., c. 6) deals with "the right that majesty hath over the Church, and in causes ecclesiastical;" wise and shrewd. Then, in c. 7, is a lucid and sagacious discussion of "majesty *in re nummaria*."

In the third book he expounds the two-fold rights of majesty—the greater and the lesser. "Having handled," says Forster (as before), "the greater in preceding passages, he now treats of the less, calling them rather 'privileges of dignity and high place,' than the 'rights of majesty.'" Necessarily this part of the subject is the least interesting; but there is yet much ability in its mode of treatment, and the same profusion of interesting authorities. At the close he guards against the possibility of an inference, from any alleged supreme power in the King, against the safe and certain property of the subject. 'He is in some sort,' says Eliot, 'in the case of a tutor, who may not alienate the goods of his pupil; or of a churchman who may not pass away the goods of the church; as being but in place of administrators, not of owners. One saith well, *Res regie dignitatis, non tam regis sunt, quam regni*.'

The MS. *De Jure Maiestatis* consists of 121 somewhat

widely but most carefully written folios (= 242 pages). A fac-simile of the opening of the treatise exhibits faithfully the orthography and peculiarities of the beautiful manuscript.

It cannot be other than a welcome gift to any lover of the great and good, thus at long-last to view, and have preserved from the hazards of a solitary manuscript, this great and noble treatise *De Jure Majestatis*, in completeness. The Port Eliot MS. of the 'Dialogue' by Sir Walter Raleigh—thumbed and evidently much used by Sir John Eliot—it is to be hoped will be collated for an urgent *desideratum*, a collection of the works of that supreme Englishman.

(8) THE LETTER BOOK OF SIR JOHN ELIOT. I regret to be constrained to say that in so far as these Letters are concerned (and cheu ! all Eliot papers used by him) Forster is absolutely untrustworthy. Besides his ineradicable habit of snipping off bits here and there, with the result that scarcely a single letter is presented in any one place in integrity,—he must have read hastily and carelessly and transcribed with the very slightest painstaking to ascertain the actual wording. His misreadings are simply astonishing. In my previous Introductions to these Eliot volumes I had similarly to express myself. It was a sharp pain to do so; but the more I have examined MSS. employed by him, the more have I got evidence of perfunctory reading and culpable carelessness. Accordingly it was with a sense of relief that in the Preface to his "Fall of the Monarchy of Charles I." (Vols. I. and II. just sent me by the Author)

I found DR. SAMUEL RAWSON GARDINER under like obligation to caution readers about Forster's books. In his praise and blame I endorse every word of this Historian, as thus (in part italicized by me):—"It would not be becoming to enter into a criticism of modern writers, as the points at issue could only be made intelligible at far greater length than I have had at my disposal; but *as it has been necessary in the interests of truth to speak clearly on the extreme carelessness of some of Mr. Forster's work*, I should not like to be considered to be without sense of the high services rendered by him to students of this period of history, especially in quickening an intelligent interest in the events of the seventeenth century" (p. xi.).

If the Reader will turn to Forster's "Biography" of Sir John Eliot and compare our text with his, almost *ad aper-turam libri*, he will soon discover how vitiated is his text. No one knows better than myself the difficulty of deciphering such MSS. as these, and hence I make no claim to infallibility. But I do claim to have taken utmost pains from first to last, and to have given days and nights for minutes of Forster in his hurried visits to Port Eliot. That I have been able to do so is due to the late Earl St. Germans and his brother and successor, the present Lord St. Germans, having allowed me to retain the whole of these priceless manuscripts in my own study for these well-nigh two years. I cannot put too strongly my sense of obligation to the Family for this their confidence and sympathy.

The Contents prefixed to Vol. II. show how varied and

representative are the Letters thus brought together. Those of Sir John Eliot's own will be found of extraordinary interest, and towards the close tremulous with pathos. It was surely about time that such Letters as these were printed *in extenso* and with adequate carefulness. The fac-similes must prove acceptable in various ways. Only a very few Notes and Illustrations are added to the Correspondence.

It is with a feeling of no common satisfaction that I thus bring to a conclusion my labours on the Eliot MSS. The six goodly volumes now furnished, may well stand for the best monument of Sir John Eliot that could be erected. It will be a bad day for England when the memory of such a man is allowed to grow dim or his splendid services, active and passive, forgotten. Our spotless as well as great names, are not so many that we can afford to forget one so *unique* in his character, achievements, and witness.

“ Old things need not be therefore true,
O brothers now, nor yet the new ;
Ah ! still awhile the old thought retain,
And yet consider it again !

The souls of near two thousand years
Have laid up here their toils and fears,
And all the earnings of their pain,—
Ah, yet consider it again !

We ! what do we see ? Each a space
Of some few yards before his face ;
Does the whole wide plan explain ?
Ah, yet consider it again !

Alas ! the great world goes its way,
And takes its truth from each new day ;
They do not quit, nor can retain,
Far less, consider it again."

ARTHUR HUGH CLOUGH.

And so 'gentle Reader' farewell !

ALEXANDER B. GROSART.

ST. GEORGE'S VESTRY,
BLACKBURN, *February 16th, 1882.*

I.
DE JURE MAIESTATIS
OR
POLITICAL TREATISE
OF
GOVERNMENT:
BY
SIR JOHN ELIOT.

NOTE.

For an account of the Manuscript—entirely holograph—of this great Treatise, which is preserved at Port Eliot, see our Introduction. Prefixed to the title-page of the present volume (Vol. I.) is a fac-simile of a portion of it. This will give the Reader some idea of the difficulty and toil in making out our transcript for the press; and perhaps excuse any inadvertent misreadings of the many puzzling margin-names, contractions, &c.—G.



DE IURE MAIESTATIS.

The first booke is of maiestie in generall.



HE terme of ma^{ty} comprehend^e 2 things viz^t 1.

supream^e { power } Soveraigntie in name
 { honor }

wthout supream^e power, is but an idle title. as on the contrarie absolute power & honor wthout the title of Kinge (as in AUGUSTUS TIBERIUS especially, and the rest of the Roman Emperors, vntill the Emperour^a AURELIAN (who was the first of the Cæsars that adorned his power, wth the title of King & his head wth a Diademe) and alsoe in the Dukes of Muscovie) gives the right of ma^{ty}.

^a Victor Aurel.

2

It is ergo an idle argument of the sworne^b enemies of Souaigne ma^{ty} to bring in y^e examples of Titular^c Kings wth were Kings not in power, but in name, thereby to infringe the authorities of absolute Monarches.

^b Buchan, de vir reg. Hottoman Brutus lib. vindict. contra Tyrannos, Roscius de inst. rep. in reges authoritate Buchærius

fior, *quod ex solo nomine trahitur argumentum parum roboris habet. Quia denominatio veritatem rei non immutat.*

lib. de abdicatione Hen. 3.

* As the Merovingian race of the French KK. under the maiores dom. the laudem. KK. under the Ephori. the DD. of Venice.

1 verso.

lib. 2. Supplem.
ad 2. Curtium.

ffor many have *regium nomen*, that haue not *regium dominatum*: et contra.

Wee must not take a Scantlinge of Royall power, by weigheinge *quam multis quis imperat sed quam Libere*: not oyer how many kingdomes on[e] rules, but wth what absolute Authoritie he raignes.

Lett it be butt like Vlisses his kingdome confined wthin the compass of a few craggs, or wthin the skirts of one Rocke, as Horace speakes of *Vlisses territorie*, yett if he acknowledg ther noe Peer nor superiour under/ god, he hath equall power wth the Persian Monarches who stiled themselves King of Kings, and Cousins of the God^d, equall power, I say, Intensive, though not extensive,

Ma^y properlie taken is chiefe power in any Estate wth bindes all others under it wthin lawes, but is not holden itself by any lawes but of God & nature.

Cap: 2.

Everie pfect Comon wealth is partaker of Ma^y that is So^ltaigntie appteines to all, that doe acknowledge noe Superiour power.

And a Common wealth is nothinge else but a right & exercise of So^ltaigne power over their Subiects.

And against these *crimen maiestatis proprie committitur*.

And improperlie against princes acknowledginge a Superiour, as farr forth as they are States of the kingdome or as the Kings Ma^y is wronged in them.

Specula de legit.

All those Authors that doe make the Pope Dominum

mundi, Lord of the world, doe depriue all other potentates whether they be Emperours, Kings or common wealthes, of sincere Ma^y or Soſtaigntie: ergo saith Charactacos the Britton in his orat to Claudius:

If y^a will raigñ over all it followes all must putt their neckes under your yoke.

They also that doe hold that it is the Emperours right that every soule be subiect unto him, doe make all other Kings/ Princes & States vniust possessours de iure of a. Soſtaigne power, & doe sowe the seeds of warr amongst Princes.

Yett the Laweirs Civill and Canon doe generally affirme Imperatorem esse dominum totius orbis: et totum orbem esse unum eius teritorium; and give to the Emperour over all other Kings temporall Jurisdiccon, as to the Pope spirituall, & if any be free from the Emperours subiection they have it from him, either by his Patent or patience, who may recall it for rebellion, sayth Bartolus & Baldus.

But the argum^t of these men are idle and proue not their assertions if y^a will not admitt their owne affirmaçons for authoritie. And whereas they alleadg Scripture as Rom: 13. v: 1. Lett every soule be subiect to the higher powers. this proves nothinge if y^a will not grant them, that the name of (powers) doth signifie only Imperiall authoritie. God doth indeed command us to be sub^e to the powers, but every one to his owne power that God hath sett over him, not all to the Emperours (ergo sayth he powers not power.

They object also that Augustus sent out an edict to tax

scilicet, in rubr.
de constit. Pa-
normitan in C.
quoniam &c.
Tacit. Annal.
12.

martial, laud.
in tr. de crim.
L. de maiest.
9. 51.

The Scipio

1. Let son

2. See

3. See

4. See

5. See

6. See

7. See

2. *vern.*

all the world, Luke 3. & that Christ commanded to give to Cæsar the things that are Cæsars. Matt. 22. that Christ himselfe was borne under the Roman Empire and was first taxed, and after payd tribute & that he confessed to Pylate that he/ had power over Christ granted him from above: and that to the Apost: saying ecce duo gladij hic. Christ answered, Satis est significieg, say they, that thes 2 powers of pope & emperour are sufficient for the whole world.

But these reasons are absurd: for Augustus taxed none but those that he had conquered & made his owne, iure belli.

And Christ payinge tribute to Cæsar teaches all to doe the like to all their princes & doth not under the name of Cæsar confine all Souaigntie, but comp'hends all other power under y^e name vnus inclusio non est alterius exclusio. neither had Pilate alone power from above but every lawfull magistrate alsoe, Rom: 13. 1. & therefore it is said of all Kings, Prov: 8. per me regnant reges: & Paul bidds vs pray for all Kings, 1. Tim: 2. not for one alone.

But the Emp: is *Dei vicarius in temporalibus*.

Soe is every prince in his owne dominion, and ergo called of god, by his owne name godds. now these Lawiers should learne their owne rule. Erubescimus sine Lege Loqui: & know that of Tully: nil turpius legato sine mandato, for quod in Lege non cavetur in practica non habetur: what is not warranted by law, is not lawfull in practice. they should prove that God gave noe supream

power to any, but to the Emperour alone, or else they say nothing.

2 they say that *dominium universale Imp*:/ pendet a iure 3- naturæ: and that as Bees have but one King, Cranes one guide, soe the world must have but one temporall father the Emp: one Spirituall father, the Pope.

Here also doe they err in limittin the universall power of all princes to one pticular Emperour, for doe all the Bees in the world come together to chuse one Kinge: or all the Cranes of the earth to make one Leader? or have not every hiue of Bees or flocke of Cranes, ther owne pticular goſnors. And soe also by their owne argum^t should every State have their owne prince. Well then nature doth indeed teach us subiection & pointe at Monarchie, but in every kingdome.

Againe what right hath the Emperour in any Countrey, but either by the law of Kings from the grant of the people or by the law of nations, by the right of warr? w^{ch} is lawfull purchace, as we may see (gen: 48. 22.) where Jacob gives Joseph that land which he tooke from the Amorite by armes by his sword & bowe. further kingdomes & dominions have distinct limitts by the law of nations.

Quod quisq; æquum putat in suâ, etiam
in aliena persona servare debet.

In this place also wee may proue by divers arguments that neither the state of Venice/ nor the kingdomes of 3 w^{ch} France, England, Spaine, Poland or under the iurisdiction of the Empire. And of England wee have the memorable

history out of L-Livius, Favoliviensis in Historia belli Gallici.

Sigismund the Emperour coming into England to mediate a peace between Henry the 5th & the french King: & being ready to come ashore was not suffered to sett a foot on land before he pressed to the Duke of Glocester (that mett him & wth his drawn sword in his hand asked him in what manner he entred whether as Emperour heer; & told him wthall, that he acknowledged noe other Emp: but his owne King) that he intended nothing ag^t the superiority of his King, but came as his friend, & if the King pleased desired to be a mediator of peace between the two neighbour Kings. And after also the said Sigismund Emp: did thankfully receive the hono^{ble} order of the Garter, from the hand of King Henry the p^rsident of that order. Lastly I conclude, y^t the Emperour hath precedence before, but noe power over any absolute Monarch. And whereas other Kings haue Legier Embassadors wth the Emp: he sends none but only to the pope.

Sentences.

Periculosum est prægrave imperium: and it is hard to keep what one cannot gripe.

- 4- noe force of letter in law must infer an/ absurd meaning. Alexander the Great commanded his souldiers to acknowledge the whole world for their Countrey, his campe for their Castle & garison, all good men for their kinsmen, and all ill men for aliens.

Plot. de fort
Alex.

Cap: 3

A Common wealth is an order of a State. order must beginn at one first or cheife w^{ch} must be first either in nature, or in Analogie; as in a[n] Aristocracie, and Democracie, where albeit many doe governe, yett because not every one alone, but all [in] coniunction doe rule, it is to be esteemed the rule of one state by many ministers. This one first or cheife hath none before it: because primo nihil est prius.

ordo pendet ab uno & de cunctis ordinis est incipere ab uno.

The cheife is that w^{ch} in that order hath no superiours.

quid supra summum erit.

That is first in order of 1 { nature: which preceeds in generation.
 2 { knowledg: w^{ch} wee can first take notice of.
 3 { efficient: which first moves.

The chief respect of order in a state consists in gouerninge, Arist. polit. & rulinge. and ergo y^t is to be esteemed cheife w^{ch} itself 3. 6. rules all & is governed of none. And if to this cheife you oppose another equall authority, you make neither cheife: ut multitudo deorum nullitas est Deorum: ita quoq; necesse est multitudinem principum est efficere, ut nullus princeps esse videatur./

Athan. in orat. aduersus Idola.

Summum (the cheife) being quiddam indivisible it cannot possible be distributed to two or more, but that in both or all the nature of cheife must be diminished, if not destroyed. As for example. If wee doe suppose that Kings & people haue both equall power against one an-

4. 1772.

c

other neither can be called cheife, because one power checkes another, & soe subiect one to another or suppose ther are two equall & distinct powers in one state, whereof neither hath any power over the other, and both seuerally supream power over their subiects. this now destroyes the nature of order w^{ch} alwaies requires one cheife, for the p'venting of confusion w^{ch} must necessarily follow such divided government.

This proves that, that w^{ch} is in a Comon wealth first or cheife, cannot admitt either superiour or equall power; but must rule all the rest of the members of that state. And this we call ma^{ty} or sou'aigntie.

- And wee may ease our selves of many intricate questions w^{ch} others intangle themselves and their readers in; as whether the prince be freed from law: or whether the people have any right power ouer or against the Kinge: if wee will sett and designe all these disputations to maiestie
5. *tanquam adæquato Subiecto:/* and in truth the true cause of errorrs in many matters herein, is because they doe not tie their discourses to the true subiect.

For men who dispute *An rex sit solutus Legibus*, doe make their discourse friuolous because they doe not determine (w^{ch} should have been done in the first place) whether the Kinge have full maiestie: for full maiestie frees him + from Lawes. absolute power is to be restrained to ma^{ty} & not be attributed to Kings only, or alone.

non potest idem
simul esse &

We doe then determine. That Ma^{ty} & all that haue in their power whether he be Emperour, Kinge, prince, or

to be carefull in the chusinge of their Bishopsith after their Election they have not power to iudg him.

The Consull did usually elect a dictator, yett was he not equall vnto him, neither could he abrogate his power at his owne pleasure, against the dictators will.

Zozom. hist.
eccl. lib. 6.
cap. 6. Nice-
phorus, lib. ii.
c. 1.

6. Valentinian the Emp: being solicited of his Soldiers to Elect a partner made them this answer. it was once in your power to chuse me, to be y^r Emp: but now that y^a have chosen me, that w^{ch} y^a now petition at, is in my power, / not in y^r. It is y^r part as my Subjects to obey: my part as y^r Sou'aigne to devise what it is fittest to be Commanded.

ad. Tac.
p.
Salmon

A King is not called as a Phisitian, whose power lasts noe longer than it pleases the patient.

Marcell. lib. 27.

Xenophon in
rep. laconica.

But they doe reply, that the people doe soe confer their power upon their Kinges, that yett they doe not depriue themselves of iurisdicon ouer them, but reteyne that power still in their owne handes. And for prooffe hereof, they doe alledg, that the old Burgundions did ordinarily dethrone their Kinges, if either fortune crosed them in ther warrs, or the earth denied them plenty of corne. And that the Ephori did cast the Lacædemonian Kinges in prison, as oft as they observed a star to shoote or fall; from whence they could not be freed, but by advice from the oracle of Appollo: yea, that they had power to fine them, and if they pleased to banish them.

here

Such States were popular and all right of Ma^{ty}. resided in the people: and Kinges were Kinges precario, & during pleasure; and differed nothing from mean officers, that held

here

ther places wth a p[ro]uise of good behaviour, nay of good liking./ We must also know that their is much difference in ordination, for it is one thinge to ordeyne & constitute one to be inferior to the ordeyner and infra se: another thing to make one to be supra se, superiour to themselves; for if such a one doe once receiue intire & perpetuall power, he is ever superiour.

2. Argum^t.

Comon weales are not created for Kings but Kings for common wealthes and kingdomes.

Erg: Com: weales & king^{domes} haue the cheife place, and Kings the second.

This argument also is false and Idle: for if all that were ordeyned, for other, were inferior to them, for whom they were ordeyned, then were tutors inferiour to their Puples, M^{res} to their Scollers, Phisitians to their patients, householders to the households, sheapheards to their flocke.

Aliud est præfici vt Dominum, aliud Subijci vt ministrum. it is one thing to be sett ouer one as Lord & M^r, another thinge to be sett under as servant & officer.

3. Argument ag^t Bucherius.

Bucherius indeavours to proue the excellency/ of the people about the prince, by an offering for both. Levit:

4. 14: 23.

A Bullocke was commanded to be offered for the people: }
but a goate only for the prince :

Erg: as a bullocke is more excellent then a goate: soe is the people more excellent then the prince.

ffirst by prince is here meant some one chief man among the people not a prince of absolute power.

The price of the Goat is not esteemed by the greatnes of the pson for w^{ch} it is offered: but by the greiuousnesse of the sinn w^{ch} it is offered for, soe that nothing can be gathered hence, but that the sinn of the whole people was more greivous then the sinn of one cheif prince.

4. Argument of Papists.

Whatsoever Peeter shall binde, shalbe bound: Math: 16:
Nothing is excepted: Erg: not Kings themselves.

A meer toye; as if ther were not as much difference between ecclesiasticall discipline, & royal dominion, as is between the sunn and moone, heauen & earth. Haue preists power over Kings & Royall Empire, for that they may binde in ecclesiasticall/ discipline, yett vpon such rotten groundes doe they plant their Cannon to beat downe Crownes.

^a in Apolog.
contr. gent.

^b ad Scapul.

^c Homol. 1. ad
popul. Antioch.
^d optat. contr.
parmen.

The fathers deliver a contrary doctrine that nothing is about Ma^y Tertullian tell us that Emperours, sunt a deo secundi ^b et solo deo minor Imperator et omnibus ergo Maior.

^c Chrysostome, that he is the head of the world, and hath noe peer in earth. Est optatus, that their is none aboute but only god that made him. So Hiero: Ambrose. This power haue all that haue Ma^y. Further Lawiers

hold that supream power is absolute. * Baldus doth well define it to be a fulness of power subject to noe necessitie, limited within no rules of publicke Law. And wickedly doe they misterme it, who call it force, Terror, Tyranny, a licence of sinninge.

* Baldus. d. l.
n. 40.

It is a learnd collection of Covarrius from Baldus his foresaid definition, that power doth so depend on the princes pleasure, that it is limited within noe reason, noe rules of right, but that he may use his power ag^t præscription of reason.

* Covar. l. 3^o.
Variar. resol.
cap. 6. n. 2.

Let us then see what absolute power is w^{ch} all absolute princes haue.

Absolute power is that, w^{ch} is not tyed to/ the necessity & coercion of law. He then y^t doth pronounce Ma^{ty} to be free from coercion of Law, doth not therby loose him from all direcon of law.

And albeit every absolute King be corporalis quidam deus in sua repub: yet is he to goune by law & reason, & not by lust & will, and if he doe not, he is not to be iudged by humane lawes.

Baldus.

When Alexander was wounded wth an arrow that stucke in his flesh, & desired by his surgeons that he would suffer himself to be bound, untill it were cutt out, because the least stirring would indanger his life, he made answer, non decet vinciri regem: soe say wee also: for Ma^{ty} hauinge noe superiour uppon earth, cann neither be iudged, punished, brought into order, deposed, &c.; of any, but of god alone, to whom only he is to make his accompt, ergo, saith David to god, Tibi soli peccavi.

Curt. lib. 9.

Psal. 51.

8 *verm.* If a King offending cannot be punished by law, he is then freed from lawes; sith the very vertue & generall force of all lawes is to compell & punish. And hear lies the very maine difference, between law & vertue; y^t law drawes by fear & foule meanes; vertue pswades by fayr reasons. Secondly also Ma^{ty} is not bound by lawes. ffor lawes are decrees of a superiour power, / to keep those in duty by force that refuse to doe their duty willingly. This causes Seneca to stile law, *virtus armata*, armed vertue: for lawes compell by force of hand what divines pswade to by counsell of head. Now then with law hath all his vertue from a superiour power, wth out w^{ch} it lies wth out life of execution, what superiour is ther in a kingdome to compell Ma^{ty}? If Hares should sett downe lawes for gouernment of Lyons, of what force would they be? And as the family hath noe power to give lawes to the M^r of the house, the scollers to their M^r, the children to their parents, &c. soe noe more hath the subiect to prescribe lawes to their Soffaigne.

But lawes ought to rule in the Citty. It is true the King must gou^rne other by them, & must give life unto them: for whence hath law his force, is it not from Ma^{ty}? yes all do confesse it. now Ma^{ty} cannot compel itselfe; and cannot be both a Soffaigne & a Subject: erg: cannot lawes domineer ouer Matie.

9. But must not the rule hold? *patere legem, quam tulisti*, yes it doth hold in private men that haue been but officers trusted to devise lawes: but not in Ma^{ty} w^{ch} is under no comand. All these examples following make not/ against *He u*

Mat^{ie} but were of private men w^{ch} were magistrates in states that had not absolut Soueraigntie.

[As of Carondas, Zaleucus, Licinius Stolo, &c.

Charondas the Tyrian to expresse the often sedition & tumults of his Cittizens w^{ch} in publicke assemblies used to fall together by the eares, made a law that it should be death for any to come into any publicke meeting wth any weapon, it fortun'd after that himself comming long after out of y^e Countrey wth his sword by his side was suddenly Summoned to an assembly & went straight wth his sword: one espying his sword cried out: Charondas rupit Legem: no quoth Charondas, I will establish it & p'sently rann himself uppon his sword for his offence; least other by his example should take courage against soe wholesome a lawe.

Zaleucus also to satisfie the lawe w^{ch} he had made, that every one taken in adultery should loose both his eyes, was content his owne sonn taken napping, to satisfie the law, by putting out two eyes, one of his sonnes another of his owne.

Licinius Stolo among the Romans/ haveing been authour of a law, that noe man should possesse aboue 500 acres of land, & himself haueing gott a 1000, & coulering it wth giueing his sonn the possession of one halfe was accused by Popilius Lenas, found guiltie & punished.]

But Law of nature requires, that wee must doe that to others w^{ch} we require of others. & ergo: said Thales truly that men might live most justly if y^e would not doe that themselves w^{ch} they doe reprove in others.

It is most true that Mat^{ie} is bound to the lawes of God

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Valen. Max.
lib. 6. c. 3.
Diodor. Sicul.
lib. 12.

Valer. ibidem.

9 vna.

Wofe

and nature & that if he breake either he coñitts fellony against god, and if he doe uniustly he is uniust. But this proues not that positue lawes doe binde absolute princes because gods law doth binde them.

And it is true, that he ought not to liue as he list, neither must his will stand for reason: but he must ever weigh; non quantum Liceat, sed quid Deceat: and the more he may the more carefull should he be to do nothing but what is just, as Mæcenas counsellis Augustus. for as Alex: the Emp: said Licet Lex imperii solemnibus iuris Imperatorem solverit: nihil tamen tam proprium est Imperatoris quam Legibus vivere, that is, albeit the Law of Kingdome doe free kinges from the obedience of the lawes of the Kingdome, yett nothing is more proper to a King then to liue accordinge to law: this made Augustus, Tiberius &c. to please the people by humility to be willing precibus impetrare of the State w^h they might iure impere: this also made Traian say when he gaue the sword to the Captaine of the Guard: Hunc gladium si iuste imperauero pro me: si autem male, contra me stringito.

Dion. lib. 52.

10.

Dion. Traian.

Phil. apotheg.
Nicephor. lib. i.
c. 17.

This caused also Antiochus & Tiberius Emp: of Greece to write to their citties and goũno^r: Si quid contrarium Legibus per epistolam iussero nolite parere, sed ignoratione me lapsum putetis: if I doe by letter command y^e any thing against Law, obey me not, but thinke my letters were gotten by surreption.

It is a foolish conceit of some, y^t the Court of Parliament of Paris/ is of greater authority then the Kinge, because they doe & haue examined some of the Kings Edicts. for by y^e

10 vers.

the same reason might they as well proue that the Lord Tresurers power is greater then the Kings, because the Kings are content y^t their grants of money shalbe of noe validitie before the granter have the Tresurers hand to his grant. ✓

The Tresurers did recall many of K. Charles his donations & subscribed those words: Immodice datum et repetatur. that is, It is to great a gift lett it be recalled. P. Emilia. lib. 9.

It is fitt then that Kings should of their owne accord liue accordinge to lawe, albeit they cannot be compelled thereunto. It is a most excellent saying of Plinius Secundus: Vt felicitatis est posse quantum velis: Sic magnitudinis non velle quantum possis: y^t is, as Soſtaigntie pmitts a prince to doe as much as he will, soe sobrietie & true greatnes allowes him to will no more then he may doe. for sith it is a hard thing to moderate a high fortune, it is a greater thinge in/ a Kinge then his kingdome to make him selfe a Kinge, subiect to his Lawes wth his subiects: for then is he Rex Regis, a King ouer himselfe. Plin. pane. 3. 11.

And this makes a true difference between a King & a Tyrant, that the Tyrant abuses his great liberty: a King will not use it when he may. The one usurpes more authority then he should, the other doth not exercise all the power that he might. Here

A King then that is iust, wise and godly, wilbe a law to himselfe & moderate his high power, not that any man cann compell him, but for these reasons: vizt. because Religion, piety, & wisdom, iustice, vertue, and his royall place of gods deputy, doth require it: besides the mar-

11 verso.

vealous profit that comes to his owne Subjects by his good example. Erg: giues Bucatius this advise to Theodosius: tantum tibi licet, quantum per leges licebit: And it is ever wisdom in him, not to use his authority, when he may vse lawe. soe lett not a prince perpetrate/ what he doth phibite: but if he doe, noe one of his subiects or altogether, can punish him, that is reserved to god. And though neither mans lawe cann iudge him, nor mans authority punish him, yett gods law will condemne, and his hand even by mans hand, execute vengeance on him, for his high power doth not exempt him from obedience to the lawes of god and nature, nor pteect him from his almighty arme: for Rex est omnium dominus, Servus autem dei cum omnibus: the King that is Lord of all, is yett the servant of god, wthall.

12.

But this opens a gapp to Kings to liue in all licence of sinninge & to be a frayd of nothing heer, & to be under noe account, & then their subiects haue noe remedy against their outrage but teares & prayers. Albeit their places of gods viceroyes exempts them from the punishment of their subiects: yett doe they ly open to the vengeance of god, whoe punishes sinnes of great men with greater vengeance, they sinn against god who/ should plead for them. potentes potenter tormenta patientur: Sap: 6. high towers have higher falls, & more hideous. gods Thunderbolt smites those high mounteynes. and doe we not see saith Q: Curtius that great trees that are many yeares a growinge, are digged up in one hower? soe it is wth kings.

Saumont. lib. 3.

Charles of Anioy was of a Count made a King of 3

kingdomes, & crowned wth victory in 3 battailes: but soe hist. nepol. c. 1. many evils did soe suddenly come in uppon him like an Inundacon, y^t he is reported to have desired of god, if it was his pleasure to pull him downe againe, that yett he would lett his iudgments come upon him by degrees, & not all at once. And how horribly god punishes wicked Kings, all stories Divine & pfane doe testifie. ✓

And whoe is fitt to punish great men, then the great god, who only is their maister? if it be a horrible thing for other men to fall into the handes of the liveinge god, much more it is/ for Kings, whoe god himself hath taken 12 v. 24. up to iudge for all their sinnes.

If Kings did but seriously thinke of this that god reserves them to his owne punishm^t from whom their is noe appeale; ag^t whom ther is no power, from whose eyes they cannot be hidd, whose sight they cannot shunn. &c., they would not take that libtie to abuse their power as now they doe. for as windes when they blowe most boysterously, then use they to cease most suddenly: soe mortall men Seneca. when they exalt themselves most proudly then use they to be nearest their downfall. /

Cap. 4.

As these princes y^t doe acknowledg any aboute them, to whom they are bound to obey, doe loose soe much of pfect ma^{ty} as they doe binde themselves to the obedience of another; soe it is noe wronge to Ma^{ty} to suffer another to be p^rfered before him, in degree of honor abroad. As ✓

13. it is no derogation to ma^{ty} in a Kinge to yeild precedence to the Emperour; who hath precedence of all Christian princes/ in regard of the antiquitie & honor of the Empire, whereuppon some lawyers will not have him sett, in numero superillustrum because he p^{re}ceedes & exceedes all degrees of dignity, et caput regulariter non venit, sub appellatione dignitatum &c.

plus in dedecore
quam dolore
mali putant
esse. Cred.
Tusc. 4.

Bodin. de rep.
lib. i. cap. 9.

Thus absolute princes being of equall power at home, yett use to be unequall in externall dignity, w^{ch} is yett noe derogation to their ma^{ty} & yett divers princes doe wth such obstinacy defend their forreigne dignity that they chuse rather to indanger their cause, then yeild to any derogation of this dignity. Soe the Spanish Ambassador sent to the States of Holand, in the interegno, did chuse rather to haue noe audience, then to haue it after Morlue the ffrench Ambassador, albeit he should not then have thereby any whitt p^{re}judicated his M^{ty} dignity; for the Senator had decreed that the Ambassador should have audience, not according to their places of dignity, but according to their first entrance into the kingdome.

13. verum.

In the Council of Trent the Spanish/ Ambassador had a private place apart from other Ambassadors because he would not follow the ffrench, & for that the ffrench refused to admitt him as a companion of equall degree. And in the end they were both putt out from all publicke meeting, the Emp: fferdinand feareinge that he should incur the hatred of the one, or the other. Bodin ibidem.

Yea in smaller things they doe stand upon pointes of dignity & make a question whoe should come first to place

of conference, sith they hold that the inferior should wait for the superiour, yet Francis the first suffered Charles the 5th Emp: to come first to the conference, and interview, at aquæ mortuæ. And the same Francis of France would have Clement the Pope to come first to Marseills, & did himself of purpose goe out of the Citty, to giue the Pope sometime to refresh himself after his iorney.

Jo. Sherd.
lib. 9.

Bellarmin hist.

And Charles the 5th followed the pope a pretty while, & way, behinde him to Bononia, for w^{ch} they give the reason, / that the inferiour should come to the superiour & follow after him.

14.

And soe also Artabanus the King of Parthea wrote to Germanicus that he would doe him honor by comming to him to the banks of Euphrates.

Mich. mart.
lib. i. c. 13.
Tact. ann. 2.

And when King Perseus made a scruple to come over the river to Marcus Phillippus the Roman Ambassador, least he should wrong his royall Ma^{tie} Philip answered, Minor ad Maiorem, Perseus ad Phillippum: w^{ch} though Perseus tooke as spoken merrily, because himself was litle of stature, and Phillip tall, yett wee may plainly perceave, that he had another meaning.

And albeit such submission abroad is noe derogation to Ma^{tie} at home, yett it argues either lesse strength or courage in him that yeildes, or lesse rule or extent of dominion, or not so Antient a Race or kingdome, or some very Antient Custome & p^rscription. But ma^{tie} is not considered but at home in his own state, in w^{ch} every one is supream. these pointes of honor are stood upon in fforeign state.

There is a second way of superioritie/ among princes,

14 vers.

when one prince of state puts himself into the pteccoon of another as a Client.

Plut. in Romul.
Halicarnas.
lib. 2.

Romulus first instituted this condicon of Clientes; assigninge the severall parts of the Plebeians, to the patronage of the Praticians the nobility; to the end to binde the nobility & people to one another in mutuall offices of defence & service. And whereas among the Greekes from whom he tooke his patterne Clientes were used as slaves, rather then as freemen, he to correct that, settis patrones in next degree of honor to parents. And Gellius thus expoundes it. be pleased to appointe that pupills comitted to our faith and guardianship, should be respected in the next place after parents, and in next place after them Clients should have respect, who had also yeilded themselves into our faith and Patronage, that they might know that Clients were to be accounted as Children & pupills and that they could not be forsaken, whout foule infamie.

The 12 tables made it death to deceiue a Client: and for a Client to wrong his patrone./

15.
Plut. in Romul.

Neither could a Client giue testimony or be a witnesse against his patron, or the patron against his Client. neither was it lawfull for one of them to sue another or to account one another enemies. And if any were proued guilty of any of these crimes, he was by Romulus law a Traitor and any might lawfully kill him wherever he meett of Diti sacrum. Now their offices or duties were these.

Patrons were bound in all businesse publicke & priuate to defend them from wronge by their wealth and power,

pleading their causes, mainteyning their suites pcuring their
 qeiett, interpreting unto them the law, caring for them
 absent & present and in all accounts & reckonings of money
 & in contracts to pforme the offices of parents vnto their
 children.

Clients were bound to doe service to their patrones to
 afford them honor, & in many cases to assist them with
 money, as for marriage of their daughters, or ransöming of
 them or of their sonnes from their enemy, if they were
 taken prisoners and in some other cases alsoe.

Dionis.
 Halicarn.
 2.

But though this were the Constitution in the begining,
 for Clients to help their patrones with their purses, yett
 Plutarch tells vs, that in aftertymes, it was held base &
 sordid for the superiour to take money of his inferiour.

15 vers.

But now the name of Client is of larger extent & com-
 prehendes them that comitts their causes to the trust of
 advocates & lawyers. It was ever held a great honor to
 noblemen to haue many Clients, & to keep the hereditarie
 clientels of their ancestors & to purchase more men by their
 owne virtue. Appius Claudius came attended to Rome
 with 5000 Clients, & M. ffabius with 4 thousand.

Cicer. Epist.
 lib. 13. epist.
 64.
 Valerius Max.
 Halicarn.
 lib. 9.

Neither did the people of Rome putt only themselves
 into the patronage of Noblemen but even whole Collonies
 & Citties, & kingdomes acknowledged themselves Clients
 to the Roman State ; sometyme ioyning themselves Socie-
 tatis et amicitiae causâ. Sometymes after they were
 beaten and subdued they desired to liue under their ptecon.
 And these noblemen, who had ouercome them in warr ;
 and receaued them in fidem populi Romani, were to be

R

Cicero offic.
lib. 1.

their patrones more maiorum, soe were the Carthaginians Scipio's Clients the Syracusans Marcellus his Clients, Capadoceans Cato's Clients, & the Clients of the houses. & these Noblemen and their heires did ever commend their affaires to the Senate, as agents for them.

16. As these things already said are/ necessary to giue vs better understandinge of the nature of Clientship, yet our question is now, of whole Citties & States, not of private men. Menippus the Embassadour of King Antiochus, setts downe 3 kindes of leagues in w^{ch} kings or States use to contract amity.

Livius. lib. 34.

1. When lands and conditions are giuen by the conq: to ye conquered, who haveing all in his power, might prescribe what he pleases.

2. When equalls in warr, entred into amity and peace vpon equall termes.

3. When such as had neuer been enemies did enter into mutuall League of Loue & Amity, wth one another. thesedid neither dicere vel accipere Leges, giue or receave conditions.

4. But ther was also a 4th kinde (of w^{ch} wee now are to speake) of vnequall Societie; either contracted by the free consent of both parties; or else after some overthrowe giuen, when the victor did yeild some of his owne right; or else to prevent some eminent warr, wth more equall conditions then would be yeilded after victory: & all these were said: esse in fide pop: Romani. to be under faith trust/ and ptecon of the people of Rome, w^{ch} is all one, as if they were called their Clients as sometymes they are.

16 ~~over~~

Livius. lib. 7.

And of these, some were in worse case than others; as

they came in upon worse conditions, & soe Dedititii yeilded or in ditione, in the dominion of the Romans as the Campanes who thus speake by their orator to the Romans; we yeild y^r State of Campane the Cittie of Capua the Country the Churches, & all divine & humane things into y^r handes, O ye Romans; quicquid deinde patiemur, deditii vestri passuri: y^t is what wee suffer heer forward, we suffer being y^r subiects, yeilded to y^a and they added: whatsoever wee shall haue, whatsoever we shalbe, wee will thinke it all y^a for y^a is our country tilled for y^a is our citty frequented: we count you our founders, our parents our goddes. noe Colony of y^r owne shall exceed us in service & allegiance unto you: & whatsoever you shall doe first for our saffety, we will after doe for y^r service and glory.

ffor it was the office of a patrone to labour for the safety of his client: and of the Client, to devote his indeuor to the honor of his patrone. } necessity that putteth 17.
States to this submission depriued them of much liberty and made them Clients, & in many things Subts. But
→ further observe, that all were not in Clientela aliorum, that in contracts were either punished wth losse of some part of their territories, or else were compelled to pay fines, or tribute, he is indeed subiect to his power to whom he is found to pforme such conditions: but in the rest of his dominion, he may reteyne Ma^{ty} vntoucht; w^{ch} as I said, is not to be measured by extent of Empire, but by absolute power ouer his Subiects. [When. Antiochus the great Monarch of Asia, being subdued of Scipio was commanded

Cicer. orat. p.
Deiotor. Valer.
Max. lib. 4. c. i.

ffroisard. lib. 1.
c. 174.

17 verso.

Sueton. in
Caligul. cap.
14, ad fin.
Dion. lib. 53.

to confine his dominion wth in Mount Taurus; and had lost all that part of Asia on this side w^{ch} the Romans reduced into a province; he was wount to say, that the Romans had done him a great favour. to free him of the charge of soe great a Countrey, and had giuen him leave to liue more at ease in a lesse kingdome. David King of Scotts, was of King Edward the 3^d whose captiue he was restored to his kingdome, uppon condicon/ that he should in the space of tenn yeares pay fīue hundred thousand of Rose nobles, and in all other things should be free.

These had Ma^{tie}.

✓ Superiority and precedence yeilded to another doth not extinguish Ma^{tie}. King Artabanus performed wonted reverence to the Romans; y^t is he adored the Eagles & the Standards of the Romans and the Images of the Emperours.

Potemo K. of Pontus being admitted inter Socios ac fœderatos populi Romani did thorough out his whole kingdome giue the cheife Seates in the Theaters to the Senators of Rome.

All Kings whom the Romans honored wth calling them reges amicos ac socios these were as their Clients: and to these they sent honorable gifts, viz^t. a staffe of Ivory, a painted gowne; the antient giftes of their forefathers, & sometimes vessells of gold & siluer, a purple gowne, and a coate or cassocke embroidered wth palme trees w^{ch} conquerors vsed in tyme of warr, and consulls in tyme of peace, and sella curulis; a chaise of state (made of Ivory wth head officers at Rome vsed/ to be carried in, and did sitt in the Senate) these giftes were sent to King Massi-

18.

nissa. these giftes were sent from the state of Rome unto Kings of whose frendship they either stood in need, or had made vse against their enemies; as royal giftes, and yett butt as guiftes only.

Soe did the Greekes in an universall assembly of all the states decree to send a crowne of gold to Alexander the great an honorable guifte after his great victories. O. Curtius.
lib. 4.

But the Romans that did send these giftes in the begin-
ninge to effect ther owne ends by them, did afterwards
make them a p'sedent against Kings of their superiority
over them. And when they were growne by the use they
had made of other princes one ag' another, to over master
all they did assume to themselves power, & right to in-
crease or diminish, to giue or take away kingdomes at their
pleasure.

And erg: saith Tacitus, Ita diis placitum, vt arbitrium
penes Romanos maneret, quid darent cuique, quid adime-
rent neq, alios Iudices, quam seipsos paterentur. Tacit. ann. 14.
18. c. 22.

And they would allow noe man the name & honor of a
Kinge, but these y' were frendes, and had deserved well of
their State. soe Metellus would not suffer Gauda K. Massinissæ
nephew and successour, to place his chaire of state by the
Consulls, because the Romans had not saluted him as King:
for that honor of sitting in a chaire of state by the Consulls
chaire was wont to be giuen to Kings, whom their common
wealth had named Kings. They did also deny the name of
Kings and frends, to Vermina sonn of King Siphax, desireinge
that honorable appellation of the Senate; and doe giue this
reason, that it was the Salust. in
Jugurth. Dion.
lib. 63.
Livius. lib. 31.

custome of the Romans to giue the honor of that name to Kings for their great deserts & not otherwise. }

19. The pope doth now as much iniury to Christian princes, sith he takes upon him to have right, to dispose kingdomes at his pleasure ; not onlie in his owne temporall dominion and territories, w^{ch} himselfe doth possesse from the liberality of kings/ but thorough out the world. And now is this Antichrist come to that hight of pride, that it is (if y^e will beleeeve him & his) in his censure and power to determine whether one be a King or not a Kinge, and to translate or dispose of kingdomes as gods vicar on earth. yea it is a position of Bellarmine, that the pope hath his power imediatly from god : and Kings theirs not imediatly from god, but mediatly by the Pope, and soe Kings ought to be subiect to Christ & the Pope and the pope only vnto Christ. And when the Pope translates a kingdome from one to another, non tollit quod deus dedit sed ordinat & dirigit ; yea thus they singe of him.

Bellarmin. de
potest. pontif.
cap. 19.

Idem. ibid.
cap. 5.

V. Canon. satia.
evid. dist. 96.

Oraclo vocis mundi moderaris habenas
& merito in terris crederis esse deus.

Otto. ffris.
chron. lib. 6.
cap. 35.
Sculken in
apolog.
P. Bellarm.
reckons up the
practises of 28.
Popes, who
exercised tem-
porall power
in deposing
Kings and dis-
posing king-
doms.

The first begining of the Popes usurped power against and over princes, was, if Otto Frisingenses say true, made against William Rufus R. of England : since when he hath wthout difference exercised his outrage against the Ma^{ty}s of others.

We finde that he hath excommunicated 8 Emperours, 4 ffrench kings. 2 kings of England besides divers others./

Besides to shew his power, pope Alexander the 3^d granted Royall robes to the duke of venice.

Pope Pius the 4th would have created Cosinos prince of florence, King, if Maximilian the 2. Emperour had not resisted it, denying any other to be King of Italy but the Emperour.

But indeed all absolute princes wronge their owne Ma^{tie} w^{ch} begg titles of fforeigne princes; as if he were not by the lawe of nations, Kinge, who in his owne dominion acknowledgeth noe superiour vnder God. for it is foolish to aske y^t of another w^{ch} common right affordes. for frustra quis innititur privilegio, quando iure communi uti potest. and in ther eager desire to haue the name of Kings, they doe lose the true dignity of Kings when haueing the power in themselves, they doe subiect themselves to the power & pleasure of another, for the bare name. Thus Badoarius duke of venice did marveilously preiudice that comon wealth, when he suffered Conrade the Emperour to give him a patent to coine money. w^{ch} by the right of Ma^{tie} did perteyne vnto them.

It was wiselyer done of the Duke of Lituania, & more for his Ma^{tie} whoe sent backe againe to the Emperor Sigismund the Crowne and Scepter, w^{ch} he volentarily sent him.

Trolageses the King of Pathia did himself make his brother Teridates King of Armenia, and sett the Crowne vpon his head in an assembly of the States. The Commanders of Alexander the great haueing gotten the Empire among them after his death, and ruleing every one in his

19. uern.

Contaren. lib.

2. de rep. venet.

Pocian de pro-

bat. lib. 4.

cap. 35. n. 69.

Volat. 4.

geograp.

20.

Appian. in.
Syriac. Justia.
lib. 25.

portion wthout a superiour did assume unto themselves the name and title of Kings.

Cromer. lib. ii.

Primislaus the first that ever brought the name of Kings into Poland tooke upon him that title, by noe authority, but his owne. soe did Roger the Normans who had taken Sicilie from the Greekes and Moores giue himself the name of Kinge of Sicilie not only wthout seekeing the popes consent but against his will. as Agathocles had done before him in the same Iland.

Diodor. Sicul.
lib. 20.

20 versio.

Those Kings that haue suffered themselves to be crowned of popes ar so farr from receiving ptection from them therby that themselves rather haue been compelled/ to promise their ptection w^{ch} is the cheife clause of the Emperours oath and of other kings and princes vnder their devotion. and Gratian would haue us beleeeve, y^t for the not defendeing of the Church, the Empire was translated from the Greekes to the Gêrmans.

But these Kings that were either placed or established in their kingdomes by the old Romans, and admitted to be their frends and allies, were also by their power freed from all iniuries of their neighbours, soe that it was not soe much to be marveiled at that soe many so proud and potent princes and Kings did soe ambitiously sue to be admitted into their frendship albeit it was not done wthout some diminution of their Ma^{tie} yett they had a care over the kingdomes, as Tutours of them. As Augustus sett a pector over Archelaus K. of Capadocia when he fell madd: and Claudius ouer Agrippa the yonger in his non-age. And on the contrary these Clients of the Romans, were

Dion. lib. 57.
Joseph. 19
antiq. cap. 7.

bound to afford them aid when they did require it and were bound to obey them in divers things. &c. Yet for all this, those forenamed Kings/ reteyned their Ma^{tie} at home, though much eclipsed abroad, by this their beinge bound & ingaged to forreigne power. 21.

As Tiridates K. of Armenia, by worshipping Nero as his God. Herode the great by casting downe his crowne at the feet of Augustus, after he had overthrowen Anthony. Dion. lib. 63.
Joseph. lib. 15.
Antiq. cap. 10.
Morus. epist. 55.

Prusias K. of Bithinia, by carrying & calling himself as the freedman of the people of Rome.

Fredericke the first Emperour casting himself downe to be troden on by the Pope : or to lay himself prostrate, as Pippin did at the feet of Pope Steuen : or to lead the Popes horse, or hold the Popes stirrup.

These things are done voluntarily for to obteyne some end for the tyme ; & soe are noe argum^t of subiecccon : noe more then was Augustus his entreating the people uppon his knee, &c. not to make him dictator.

Sw
Suet. in Aug.
cap. 52.

ob hec non deletur sed tamen
deprimitur Maiestas.]

Thus clientele and submission to sovreigne power, doth not loose Ma^{tie} soe it be done salvo ipsorum iure at home. this was the iudgment of Antonius in the case/ of Herod being accused before him for the killing of Aristobulus: It is not fitt saith he, for any who is a Kinge to render an account of his actions, otherwise he is not to be held a King. for after y^t once royall honor is granted unto him It is meet also that he inioy royall power, that is full and

21 verba.

Joseph. antiq.
lib. 25. cap. 4.

✓
 absolute. for he that bindes himself to any upon certaine
 L. cum ita. 63. condicōns reserves unto himself whatsoever is besides these
 condicōns according to that rule of law excipiens in vno
 firmat regulam in reliquis.

Cap. 5th De Feudis.

Feuda fees are cōmon in use at this day among both
 Christians, and Mahumetanes, but whence they had their
 beginning laweyers cannot yett agree.

Some thinke that sith there is soe great agreem^t between
 the Roman clients, and our Feudaries that they had their
 beginninge thence. but I cannot yeild them either to be
 the same ; nor yett derive them from them.

22. ffor Clients had prⁱety & full right in their owne goodes.
 neither were they bound/ to any services in regard of any
 goodes. but because the patrons did binde them unto them
 by mutuall offices.

And albeit jus ffeudorum sit antiquissimum, yet it is not
 therefore to be derived ex iure Romanorum, as Cinacius
 holdes, or from the tyme of Noe, as Nollius improbably
 coniectures. But rather it came from the same place that
 the Longobardes came, in all likly hood. for the Lom-
 bardes are the first y^t either brought it into vse or that are
 knownen to haue vsed it.

Julius Clarus
 in 6 ffeudum.
 9. 1.
 door. de ffeud.
 c. 3 &c.
 de benef. cap. 3.
 Paul. de mor.
 Jerm.

✓
 As rights w^{ch} arise from Custome, do increase from an
 uncertaine and small beginninge, to certeyn statutes: soe
 also may wee probbibly affirme, de iure ffeudali whereof
 Tacitus delivers some apparent beginnings among the Ger-
 mans.

Cynicus

But however it had his origine, It did after the Lom-
 4 bardes had once brought it up, soe exceedingly encrease,
 that not only ffarmers, Townes, Castles, but whole Cittyes
 whole principallities and Kingdomes, begann to be giuen in
 fees. of w^{ch} wee are now to consider whether they that
 are bound to pforme fealty to another, as to their Lord;
 dve, or/ cann reteyne the right of Ma^{ty}. Kings or princes 22 *verm.*
 may be made fiduciarij or feudaries 2 waies.

1. by holdinge their dominion or kingdome in fee.

2. By holding some other landes or Countrey besides
 ther owne kingdome.

ffor Kings may receaue in fee, not only of their equalls,
 but alsoe of inferiours as the feudests deliver. And princes
 are not presumed to be excluded, when the Law doth
 generally admitt any one to investiture, wthout distinction
 of persons.

William the Bastard w^{ch} first conq: England, albeit he
 was absolute in that kingdome, yet was he bound to pforme
 fealty to the King of ffrance for Normandie.

Hen: 2^d sonn of Maude the Empresse & Earl of
 Anioy, held Anioy & Turene wth their neighbouring
 Lordshippe in H reditary right from his father; Aquitane
 wth Eleonore his wife; & Brittany, by marriage of
 his sonne Jeffery; who married the only heire of that
 dukedome; & Normandy as his owne inheritance by his
 mother &c./ soe that he had little lesse, then one half 23.
 of ffrance in his owne possession, for w^{ch} he sweare fealty
 to the ffrench King. This wealth and puissance breadd such
 icoloussie in the ffrench Kinges that it was thought, they

were stirrers of the Sonnes against the father, and vn-doubtedly they did ever assist them.

But the English did not long possesse in peace soe many princes sith the English in soe great power could hardly brooke a Superiour; and the ffrench was ever suspitious of the greatnesse of his vassall. And therefore when John K: of England, had either caused, or at least consented to the killing of his elder brothers Sonne; Arthur duke of Brittanie, taken prisoner in warr; he did heerby giue occasion to the ffrench Kinge, to summon him to a triall by his peers, and when he would not appear to seaz into his handes all his fees; all w^{ch} King Philipp gott into his handes, & lefte him litle more then Gasconie vntill such tyme as Edward the 3^d did not only recouer the greatest part thereof by armes but made allmost free, to be held wthout doeing of any homage./

23 verso.
Joh. Maior.
Buchan. hist.
Scot. Barclay.
lib. 3. contr.
monarch c.
vet.

The King of England also had the King of Scotts his homage; either in regard of some Conuntries he did hold, of and from the English Crowne, as the Scottish witters say, or in respect of the kingdom it self, as the English affirme.

And surely Edward the first of England being as a iudg between Bruse & Bailioll Competito^r of that kingdome, fetched y^e Scottish subiection further off, by the faith and wittnes of Antient writers as Marianus Scotus, W^m. of Malmesbury Roger Houenden; Hen: Huntington; who relate that Athelstane Kinge of England, haueing conquered Constantine Kinge of Scotts, restored him his Kingdome, upon condition he should hold it in fee of him. And

that Edred brother of Athelstane tooke an oath of an allegiance of the Scotts & Northumbers: that Kineth did homag to King Edgar: that Canute haueing taken Malcolme, the Scottish King stiled him self King of Scots. y^t S^t Edward gave the kingdom of Scotland to Malcolme uppon condition to hold of him as his cheif Lord. that Malcolme did homage to W^m. Conqueror: and Daudid to Kinge Steuen: and it is very certaine that W^m. Kinge of Scotts did wth y^e nobles of that kingdome, swear fealty to King Henry the Second, & did acknowledge/ that himself 24. and his wole Kingdome was vnder his allegiance.

The same oath did the same William of Scottl: sweare to King Richard the first, & King John. And Alexander the second sonne of the foresaid Kinge William did homag to Hen: 3^d Sonne of Kinge John; et iuravit illi fidem in perpetuam tanquam Ligio domino suo, pro se & Heredibus. and to the same King Hen: 3^d homage was done by Alexander at York; & when the said Alexander died, haueing only 3 Sisters or otherwise wthout heires, and the competitors could not agree wthin themselves the lordes of Scotland put the case to King Ed: affirming that the decision of that controversey apperteyned vnto him, as the Soſaigne Lord of the kingdom of Scotland; and that they would stand to his determinacon. John Balioll being of him declared King, received Scotland in homage from him and sware fealty vnto him in these wordes. this heare y^e my Lord Edward King of England, Soſaign Lord of the kingdome of Scotland, that I John de Balioll King of Scotland, w^{ch} I hold and claime to hold of y^e that I shalbe

Paris. Hovden,
Polidor. Higden.
Walsingham.

Paris in Hen. 3.
Annal. S.
Alban.

Rich. Southwell.

24. *vero.*

faithfull & loyall; and owe faith/ and loyalty to y^e I shall beare of life and member and of earthly honor against all people; and lawfully I shall acknowledge & doe the services w^{ch} I doe owe to y^e for the Realme of Scotland aforesaid.

The Scotts doe not deny this, but doe accuse Balioll to have done it, as more desirous of the kingdome, then of his honor, w^{ch} after he was once settled in the kingdome, he fell away & entred into league wth the French Kinge ag^t England. But his end was to be carried away captive in Chaines, and Edward made all Scotland his owne, vntill Robert Bruse escaping out of his handes gott from y^e degenerate sonn of King Edward what he could never obteyne in the life of the Braue father.

The King of Denmarke, as he is duke of Holst owes faith to the Empire; except his dukdome of Sleswicke w^{ch} dependes uppon the King of Denmarke.

And when a certaine Nobleman not farr from Sleswicke had appealed from a sentence of Christian the 4th to the imperiall chamber, the King to that & some/ rayling wordes w^{ch} pricke the mindes of Kings more then swordes, soe greuously. that he commanded his Castle to be sett one fire, w^{ch} as we passed by we saw a smookinge. The King of Spaine holds many things in fee from others, as Millaine & some p^vinces of the Low countries from the Empire: Naples, Scicilie, Hierusalem, & Arrogon from Pope: & in tyme past fflanders & Artois ffrom ffrance. but Charles the 5th did utterly free himself from his obedience for all, except Carolois at the peac made at Madrill;

& further it may be proued from diuers testimonies, that the Dutchie of Millaine is *ffendum Imperii*. & that the kingdomes of Naples and Sicilie are also holden of the Church in common account: but he examines the title of y^e Pope confutes Constantines donation & Pippings by this argument.]

If the whole world be in the power of Popes because they are the vicars of Christ on earth, they then need noe allegation y^t Constantines donacion for some part: But they doe alledg the donation of Constantine, Pippings, &c.; to proue their right, to those temporall dominions: Erg: the whole world is not in the popes power as Christs vicar.

The pposition and consequence is proued by the common principles of law & reason, as *Rei suæ acquisitio nulla est*: that is for that which is ones owne there needes noe gift or purchase.

If the Pope receaued any thing by gift it is certayne that he had it not before; or else the Pope were a errant foole, who would p^rtend to hold that by speciall priuiledg w^{ch} he might possesse by publicke right. for *nemo vult speciali privilegio acquirere: quod iure publico possidet*.

But our Law Jesuits will answeare y^t Constantine did not giue, but restore to the Church, what God had given to Peter, & soe the Church receaued but her old right, not a new gifte. But if this be soe, then shew in all the Scripture or any other writer of the first churches, where, when, how and for what cause, god or Christ gaue Peeter any such power over the whole world; or that w^{ch} now they

25. uera.

L. 4. c. de
contrah. Emp.

L. imperatori
ff. reb. ant.
ind.

26. call Peeters patrimony. if they cannot, nay if the contrary can be shewed, causa cadunt, the Pope is a vsurper, as in truth he is. for as Christ had not/ a hole to put his head in, & said plainly his kingdome was not of this world: soe neither had Peeter as much as a house of his owne in Rome or Italy: or right to any Lordship by his Apostleship.

But the Popes growne great in esteem & power, & the Emperour of the Greekes weake in these westerne parts; & not able in the west to match the power of the ffrench Kings: the Pope and the ffrench served themselves by one the other: and the ffrench gott by the sword from the Empire, and the pope (pvided he might be a sharer with them) gaue them right to hold the Emperours inheritance, w^{ch} he had neither right to giue, nor they to take or hold; and this god revenged after upon the posterity of Charles the great by the pope who helped to depose his issue from the Empire, and in the end from the kingdome of ffrance also.

26 verso. And this Bellarmine drawes into an/ argument of the Popes right to translate Kingdomes and Empire, w^{ch} was an act of treason in y^e Popes against their supreme Lordes the Emperours.

Yea even the Pope himself, as this authour proues out of their owne authors holds diuers territories in fee of the Emperour, as the exarchate Ducatu Perusinum, Tuscum, Campanum w^{ch} he receaved of Charles the great wth reser-
 Carol. Sigon. lib. 4. hist. Ital. vacon, vt ius principatus & ditio pænes Imperatorem maneret. and all the land that the Countesse Matildis gaue

by her will to St. Peeter w^{ch} was great, the pope cannot hold in other or better right, then shee had it, w^{ch} shee held of the Empire as a vassall thereof. this soe troubles the Popes, that they faine in their forged donation of Constantine that Const: the Emp. gaue to the church, all the land of Matildis the Countesse. And this amonge others is a strong argum^t against the Popes patent for all his temporallities. for first it shewes y^t/ that donation, is a suppositious counterfeit; ffor Constantine died, Anno Chr: 340. Hieron: in Chron: and Matildis Anno 1115. yett her landes soe many hundred yeares before she was borne Constantine forsooth gaue to the church.

27. ✓

But the Divines that are not manciated to the Pope teach otherwise, that omnia q^{ue} ad vitam terrenam spectant, subiecta sunt terrenæ potestati & St. Ambrose: Non vis obnoxius esse Cæsari? Noli habere quæ sunt mundi. & St. Augus^t: Tract: 6. ad cap: 1. Noli dicere, quid mihi et regi: quid tibi ergo, et possessioni; and a little before. Tolle iura Imperatorum et quis audet dicere, mea est illa villa, aut domus hæc mea est, & per iura regum possidentur possessiones.

Hugo de S^{co}.
Victor. de Secr.
lib. 2. p^o. 2.
c. 6.
Ambros. lib. 2.
ep. 1.

Now the Pope holding land in fee is to pforme feolty: neither does his pson or place priuiledg him.

And the Pope that otherwise exempts his Clergie from secular iurisdiccon yett in controversies of ffeudes suffers them to be subiect to secular courtes, &/ a civill Judge in any pceed against a Clerke; quando natura causæ ita fert. that is, in cause of right & possession. for saith Baldus natura causæ trahit ad se psonam, non persona naturam

27. vera.

Bald in C. 1.
n. 4. de contra
feudos. ap^d.
paros.

causæ, soe may the popes right be judged of princes in these landes that he holdes under them.

But doth he that bindes himself to another service being an absolute lord in his owne kingdome loose the rights of Ma^{ty} or may he not rather in divers respectes bee a king and a vassall. we hold this to be more probable w^{ch} is latter, & must distinguish between the pson of the vassall, & the fee possessed.

ffor as one man may be a lord to one a tenant to another. & one & the same man is often a M^r in his owne house, and a hireling & servant in another, soe may a King be both absolute at home & tyed to service to a sovreigne prince for lands that he holds vnder him abroad. soe doe the Laweyers say that the German princes are
 28. Emperours/ in their own pvinces, vnus tamen Imperatoris imperium comiter conservare tenentur, y^t is, are bound to labour for his honor safety and authority, and to oppose whatsoever may derogate from him.

But in this case we may distinguish inter regnum & psonam Regis. for the kingdome doth not lose ma^{ty} for y^t the pson of the King is bound to pforme ffeolty, w^{ch} growes as it were to his person: for then not the kingdome is bound to pforme service, but the King that receiues the ffee; w^{ch} he receaved not as King, but as vassall; Nec ffeudum coalescit cum regno. soe England was noe vassall to ffrance for Normandie, but the Kinge that was also Duke of Normandy: & qua dux Normandiæ non qua Rex Angliæ. yett the pson of the King, w^{ch} is bound in feolty cannot be said to be indued with ma^{ty}, because he

may be accused convented, condemned, and in a word, is bound to the service of another, wh^{ch} service/ is directly 28 *vern.* / contrary to ma^{ty}.

[Charles King of Navarr, & Count of Eburovia was called and compelled to answeare and plead in the ffrench Kings Court & was tried by his Peeres for the killing of the constable, & being convicted, and haveing gotten pardon by the intercession of Johan and Blanch the two Queenes did vpon his knees give thankes to the King for his clemency. And the same King Charles being not long after by the ffrench King clapt up in prison, from whence when he did escape by cunninge, into his kingdome of Nauarr was punished wth forfeiture of all his estates & goodes, w^{ch} he held both in Normandy and Languedocke. for the kings of Navarr were not only vassalls, but also subiects of ffrance (as also were Charles of Anioy, to whom the Pope gave the kingdome of Sicilie, & Godfrye of Bullen that gott the kingdome of Jerusalem, and Baldwin w^{ch} seized into his/ handes the Greeke Empire :) for Philip the father of this said Charles who had gotten the kingdome of Nauarr in the right of his wife was descended from Counts that were subiects of ffrance and he could no more forswear his contrey for a greater dignity then a sonn can doe the power of his father, when he is exalted to the dignity of a senator: as the Lawyers say.]

*Osgum. lib. 9.
c. ffrois. lib. 1.
c. 154.*

*Chron. Dionis.
cap. 33.*

*29.
Resmer, in
genealog.
Hottom. 9.
illustr. 35.
vers. 2. in
summa.*

It is a very hard thing to be bound, to the service of two Lordes, but much harder to be the subiect of one and the vassall of the other.

And it is agreed among Authors, that the subiect of one

prince cannot be made the leige vassall of another. ffor a leige vassall is, when one is bound to pforme faith to his lord, whose vassall he is against all men. and none cann haue a leige vassall but a prince that doth acknowledg noe superiour, & soe hath ma^{tie}. If then this feolty leaue noe place for another feolty : it is manifest, that none can/ be the vassall of another, if he be not also his subiect.

29 verso.

ffor noe fidelity by covenant (as all feolties ordinarily are) can be so sacred that it should be preferred before the piety that is due to ones Countrey neither can anie vassal be soe strictly bound to his lord as a subiect is to his King & countrie. ffor our obligacon to these is naturall & immutable, & commanded by the law of God : but to the other by compact. And a vassall may in many cases renounce his Lord ; but a subiect may neuer forsake his countrey ; w^{ch} wee must loue aboue parents and ourselves ; for, Chari propinqui, Chari parentes : sed omnes omnium Charitates vna complexa est patria. ob patriam interfic ipotest pater.

Cicer. offic. 1.

L. immius de
relig. § fil.
de cap. et post
seb.

Ivray. de pen.
can. 2. n. 11.

And as in other cases the sonne is bound to nourish his father being bannitas, yet if he [be] a bandetto if he [have] been exiled] forsome thing practised against his countrey, the sonn is excused from that duty of aliment to be given him.

30. An oath of a vassall to his Lord doth not binde him against conscience, Religion, his Countrey or himself: ergo:/ saith Baldus: Charitas ordinata se plus amat in ungue pedis, quam adversarium in vertice capitis. ergo a bond made against ones selfe is held to be made against equity & justice & soe to be void. Nec unquam testator alienas succes-

siones propriis antepone debet. yea also donatio revocatur, si donanti nati fuerint filii: for it is supposed that a man that thought of his owne sonnes would haue made no donation to preferr strangers before his owne posterity in succession. This is the cause that diuine & humane Lawes doe hold, that one that murders himself, is the most greiuous murtherer. And Augustine saith excellently. Now then because it is said that thou shalt not beare false wittnes against thy neighbour: noe man must suppose he is noe sinner if he doe giue false wittnes against himself, because Regulam diligendi proximum a semetipso dilector accepit, for it is written thou shalt loue thy neighbour as thyself. Soe we infer that generall bond doth not binde one against himselfe. and a vassall that/ hath p'mised to aide his Lord, against all is not to be vnderstood to have p'mised this against himself; for, in generali sermone, non videtur contineri q^d quis præsimitur excipere voluisse: or against his father, whoe is noe enemy to his Countrey, much less against his Countrey whereof himself is part: & w^{ch} is a superiour lord, & more antient. and ever, Potior sit iure qui prior est tempore.

And albeit it be of the nature of leige homage to submitt all his goodes, & his pson to his Lord; yett it is also plaine, that a subiect cannot make such a contract against his Countrey: because a subiect cannot depriue his Countrey of the right and Jurisdiction y^t it hath, over all the inhabitants and their goodes. Now these reasons are much affectuall to proue, that a King of absolute power cannot become the leigman of another Kinge, because he is more

Baldus. cons.
312. visis actis
col. 1. lib. 4.
L. cum amicitia-
simi. 3 in fine.
cap. de fod.
fforster de suc-
cessa. lib. 4. 11.
5. in fine.
L. si unquam
ibi gloss. et
Thirag. cap. de
revoc. don.

30 verna.

L. obligatione
ff. de signori-
bus.

Alvaret. ad Gr.
fine. n. 6.

31. strictly bound to his own kingdome & Countrey. ffor he hath contracted marriage wth it, w^{ch} he cannot dissolve by feolty to another. He hath tyed himself in/ a solemn oath to his owne Countrey against all men, and therefore can he not undoe it by another oath. and if he should take a new oath against the first, this second were void, being taken to the p^rudice of his Countrey.

Pistor. d. 9.
47. n. 35.
Malm. in consuet. parr. 1.
§ 2.
Rolland. abul. cons. 44. n. 16.

Hence it is y^t. divers doe wth good reason conclude that a feude may be called in if the Lord shall know that his vassall, after leige homage donne him hath already a superiour Lord. for fidelity due to an antient lord, hinders that he cannot pforme the feolty, that he pmised by oath to his new Lord.

ffor this cause Pope Clement the 4th when he made Charles of Anioy his leigman, put in this condition, that he should never sue to be Emperour, nor receaue it if it were offered him. But the Pope should have considered that it was a matter of greater moment, that the s^d Charles was not only the leig vassall, but also the subiect of the King of ffrance; from whose obedience the Pope could not exempt him.

- 31 *verm.* Yett the doctors doe deliver that albeit/ none can be the leig man of two lordes yett in equity it may be granted to a vassall that if ex post facto, he come to succeed in another leige homage, to binde himself in feolty to the second Lord wthout exception. But take this in vigorous termes and it implies a contradicon; sith leig homage looses his nature when the vassall admitts another lord to obey against all men, unlesse the former lord doe by indulgence

allow him to pforme his service to him by an acceptable substitute, such as he doth approve of. without such a grant the former lord hath ever best right. and a King is evermore bound to his old coimon wealth.

Therefore did the Polanders accuse Lewis King of Hungary wthout cause, for that he did shew more care to his old kingdome, to which he was borne, then to the new to w^{ch} he was elected. And wronged Hen : D : of Anioy to whom the kingdome of ffrance was lately fallen, for that they did deny him to be accounted their King/ unlesse he would wholly giue himself to the kingdome of Polonia alone wthout reservation.

Cromer. hist.
Polon.

32.
in epist.
revocat.

Neither was it a reasonable request of the Hungarians w^{ch} they made to Vladislaus the 2^d that he being King of Bohemia & Hungary should keepe his most residence in Hungary, & should seldome goe to Bohemia.

Bonfin. deced.
4- lib. 4.

When 3. kingdomes were united in Margarett of Denmarke there was an agreement made among the nobles, that the K : should reside the first year in Den : the second in Swetland, & the third yeare in Norway. and indeed duty and conscience bound them to doe noe lesse.

Chytræus.
2 Sadi.

When Pope Gregory demanded of the Emperour ffredericke the 2^d Sardinia for the Church, and told the Emp : of his oath given to defend the right of the Church : the Emp : answered that he first tuke an oath to defend the rightes of the Empire ; and that therefore he was rather bound to the keeping of that And in the same manner when ffrancis/ the first was urged of the Emperour Charles the 5th to free his faith and pforme his oath w^{ch} he had

Sigon. lib. 18.
hist. Ital.

32 verm.
Culciard.
lib. 27.

taken at Madvill, for delivering up some parcells of the Crowne of ffraunce upon condicon of his ransome; he said that he had taken a former oath at Rhemes, w^{ch} oath was not to alienate any partes of his kingdome.

But in truth all these things should haue been thought on afore, and not made excuses afterward.]

Princes must not make themselves princes of vassalls, if they be not able to pforme both. for none cann serve 2 masters, or be the leige of 2 lordes, in solidum; much less be the prince of diuers coimon wealthes, and the leigman of another lord, for he cann satisfie neither, sith he cannot satisfie and serve both, for that he cannot wholly communicate himself to many unlesse those many States doe, coalescere in unum corpus, be made to grow up into one body, as we see it sett out when Margaret aforesaid ioyned the 3 north kingdomes under one govern^t. albeit that coniunction was rather in a perpetuall league then in one bodie or as the Greeke Cittyes, by the law of Amphiction or the Switzers./ whose Cantones are ioyned in soe firme a league, that they seem to be but one State.

✓ Soe Lituania was truly vnited to Polonia, when Jagello married the Queen of Poland, upon Condition that Lituania and Polonia should be made one comon wealth, & should be ruled both with the same lawes. And in the very same manner, were the Borussians afterward adopted into the same comon wealth and had their Senato^r in all assemblies of the states aswell as the Polonians. The same reason ought to move the English and Scotts, to consent to the Kings Edict of vniting the 2 kingdomes. ffor

ther is no better meane to extinguish the emulations of either Nation, then by takeing away their causes & the difference of Nations: soe Romulus mixed the Sabines wth the Romans in one Comon name, and named them quirites, & soe takeing away the fuell of deadly feares made of enemies frendes of aliens Cittyzens of 2 jarring states one concording comon wealth./ Neither cann the King more diligently provide for the good of both, then by vniting them into one Comon wealth; and by makeing choise of his counsellours both of Scotts and English wthout difference and by suffering but one cheif p^riamment of the whole Ile. ffor this was the most ready way, that their Ancestors could devise to abolish all antient hatredes. As it appeares by the Councells of Edward the first who desired for this end Margerett the sole heire of Alexander the 3^d. Kinge of Scotts, in marriage for his sonne and of King Hen: the 8th whose sought to haue gott Mary the only child of James the 4th for wife. to his son Edward the 6th. But it seemes that god hath reserved that happines to these tymes wth both Nations and the Kinge especially ought to imbrace with both handes.

Livii. lib. 1.
Albert Gentil.
in discurs. de
unione Brit-
tanar.

33 ~~vers.~~

Buchan. lib. 2.
and lib. 23.
hist. Scot.

But if (as yett they are) the[y] should remaine diuided kingdomes, whether should the King haue greater respect of, sith he cannot giue/ himself wholly to both, should he regard England aboue Scotland because it is the greater and more excellent? but Scotland may alleadge that it is his native Countrey, and hath first right unto him; and that he was by oath first bound unto it: all w^{ch} doe more oblige the King to Scottl: then to this new acquired kingdome for

34.

H

new frendes must neuer p'iudice old. and antient allies must be preferd.]

But to returne to our purpose, we hold that he that hath pmised his whole service to one state cannot couenant the same to another ; as they doe that haueing the gouernment of Comon wealths doe make themselves the leig vassals of a fforreigne prince, Neither can the same man be an absolute Kinge, and a leige-vassall, if y^e take liguim as lawyers doe define it.

And it is not the distinction of diuers respects in one man that will serve the turne : as for example if you consider Charles the 5th in one respect as he was Duke of Brabant/ and in another as he was Earle of flanders.

This distinction Hermalaus being taken in treason against Alexander the great, made : wee would haue killed thee indeed but not as our Kinge of Macedon, but as the King of the Persians: and wee doe pursue thee as a Runnagate, fled to our foes, & that, iure belli.

ffor albeit it be true, that ther may be two capacities in one p'son, as of a tutor and a legator, yett this cannot be in a leig-vassall: for he is not bound respectively, as he is Earle, Marquese or Duke but absolutely for his p'son life & all his goodes, is he obliged to his lord.

But for a King to be a simple vassall ther is nothing to hinder it if we may distinguish between the kingdome & the pson of the King.

But however the king^{dm} be absolute & cannot be made worse. from the Kings pson, yett the pson of that King w^{ch} hath done homage to another doth not reteyne ma^{ty}

34 verso.

Q. Curtius.
lib. 8.

Rosenthal.
c. 20. conclus.
12. n. 24.

vntainted. ffor if the Pope doe receaue a ffeude/ ffrom an earle, or the Emp: from the church both of these are infe-
riour to their Lord of whom they doe receaue investiture
respectu ffeudi, for the quality of y^e tenure is not changed,
for the changed condition of the tenant.

And surely the very right of investiture shewes how
much subiection & service is due from a homager to his
lord, for what can be more base or abiect then to come in
manner of a suppliant, before his lord, wth his armes putt
offe, his spurres bound upp, his head bare & kneeling
downe upon his knees to putt his suppliant hands holden
up into the handes of his lord, or his deputy, to receave of
him a banner or a sword, in w^{ch} fashion Albert ffrederike
Duke of Borussia together wth the ambassador of ye Mar-
quesse of Brandenburg received a banner at the handes of
the Chancellor of Sigismund Augustus King of Polonia./

And Philip the father of Charles the 5th when he swore
feolty at Artois to the Chancellor of the ffrench Kinge
An^o 1499 made himself in many things more abiect and
had not soe much as a resalutation when he had in great
humility saluted the Chancellor at his cominge in.

It is markeable that kingdomes are delivered by a sword,
& p'vinces by a banner, and Dukedomes also by a Scepter
and a Sword, w^{ch} if any receave from the Emp: the cus-
tome is that he must solemnly kisse it, as in tyme past the[y]
used to kisse his hand reached out vnto them.

Now this base feolty cannot be alway pformed by a
proctor, but in some cases where the custome is such, or
where the Lord pleases to allow a deputy. And cann

35.

Baldus, in b.
sed si hac lege
& sed si liberta.
ff. de in ius
voc.

Chytræ. lib. 22.
Sax.

35 curia.

Otto. ffrisingen.
lib. 2. cap. 5.
Hottoman.
disput. de ffeud.
c. 23.

Cinacius. Cujacius

Valer. max.
lib. 8. cap. 1^o.
36.

we count him a free & prince, w^h is compelled to pforme such abiect service to a higher lord? The Romans held L. Piso, that was w^hin a little of being condemned, to have/ had punishment enough, for that falling downe at the feet of the iudges, his mouth was by chance filled with dirt and soe discharged him w^hout farther punishment.

Justin. lib. 6.
Herod. lib. 9.

The Greekes would never indure to adore the Persian Kinge, least they should p^riduce the liberty of their Countrey.

Plutar.

An Ambassador of the Thebanes being sent with Pelopidas to King Artaxerxes, and commanded to adore y^e Kinge cast downe his ring upon the ground, and stooping to take it vp before the King, seemed to haue pformed that complement.

And Callisthenes chose rather to hazard his life to certaine perill then be brought to worship Alexander as a god against the fashion of his Countrey.

And if free subiects could not indure to adore Alexander their King, whom they were bound to honor as their parent: shall wee not thinke it harsh to kings to put the neckes into the yoke of base service./

36 veru.
Tacit. annal. 2.

quibus non tantum infima, sed et mediocria insolita videntur.

Surely Richard the 1st Kinge of England chose rather to bringe the whole affaires of Christendome into perill then carry himself as inferiour to the ffrench Kinge, who challenged a superiority and primary, because he said Richard was his vassall.

Neither did Edward the 3^d stand upon anything more

in his articles of peace wth the ffrench, than that he might possesse wth absolut ma^{ty} all these pvinces in ffrance w^{ch} he held in homage of them.

And after his example Charles the 5th would remitt any thing rather in his treaty at Madrill, then that fflanders & Artois, should be held any longer in fee of the ffrench.

Nothing did soe deeply prick John Balioll, who had resigned himself into the vassallage of the King of England, as the shame w^{ch} he thought he did sustaine, when being cityd to answear his cause before the King of Eng: wth Macduff, & desireing to answere/ by a proctor he was himself compelled to rise out of his place where he sate next unto the Kinge, & in a lower place to plead his owne cause. & this reproach did soe exasperate him that he did wthin a while after utterly renounce all command of the English. Buchan. lib. 8.
in Ball. in princ.

If we doe but consider what an honor the Macedons held done unto them to haue leave to sitt at Table wth their King. And if wee see many men to esteem it to be no small part of ther happiness when they may have licence to converse wth their princes, wthout too much humbling themselves, as Anthony de Leva when he stood by Charles the 5th bare headed, after the Spanish fashion, and the Emperour had bidd him sitt downe, because he had the gout in his feet, answered, that his cheif infirmity was not in his feett, but in his head: by w^{ch} he would lett the Emperour understand, that he would rather haue had leaue to putt on his hatt, then to sitt downe. If I say we weigh/ this, wee may easily guesse on the other side, how harsh Curtius. lib. 2.

P. Math. hist.
de la paix.

37 *norm.*

and painfull it is for princes especially to throwe themselves downe at the feet of others.

Muster. 3^a pte.
geographie.

Ottocarus Kinge of Bohemia when he had done homage to Rudalph of Hosburge then Emperour for his kingdome of Boheme was of his wife disdained, and not admitted to her bedd. Soe that he was compelled to breake his faith given before.

And this did much increase the indignity that Rudalph had before been a servant unto Primislaus father to Ottocarus. and also that when Ottocarus did upon his knees take his oath in the Emp: tent Rudolphe had subtilly suffered the sides of his tent to fall open, yt Ottocarus might be seen of all, in the pformance of his base allegiance. And the same deceit the King of Poland vsed against Steven prince of Walachia, who doing his homage, he laid open to the sight of all, by cuttinge the tent: whereupon he also fell from his faith giuen, & did revenge this ignomyny: wth all his might.

38.
Munster. ibid.

But the basest maner of Inaugurating any prince, is that custome of the Duke of Carinthia admitted to his Duke-dome. ffor he must be clad in a Clownes weed, and must with a staffe in his hand driue an oxe and a horse before him like a sheeheard, and a Rusticke sett upon a marble table giues him a box on y^e eare, and after delivers the principallity into his hands upon condition that he will promise to defend the Christian faith, preserve the safety and immunities of the prince and administer iustice to every one.]

And besides this reverence to be p^rformed wth is very

greivous to any ingenuous, much more to a Royall minde, ther must also servile service be pformed ffor lawyers hold generally, that the very essence of ffeude consists in services. and it is a rule that in dubio contrahentes, iuri communi se conformari voluisse præsumentur.

Bald. i. l. sc.
duo. 38 de
acquir. hered.
38 verum.

And ffeolty is so naturall vnto ffeude/ that it cann noe more be seperated from it then essentia a re.

ffidelitas hæc sex continet Incolume, tutum, honestum, vtile, facile, possibile.

These the vassal is bound every to. pforme to his lords and if he doe not, to loose his fee.

Now cann wee esteeme him a Kinge that is soe religiously bound to doe service to another sith a monarch is to serve none but to be served of all.

The Kinge of Naples besides a very great pension to be paid, is bound to send for the aid of the lande of y^e church, when the Pope requires him 300 horsemen well armed soe that every one haue at the least 3 horses and this vppon his owne pper charges 9 moneths every yeare. also he is bound to haue a thousand horsemen beyond the moun- taines in readinesse, fero negotio fidei to imploy for the faith vpon forfeiture of his fee to the Church of Rome./

Aurea bull.
Clement. 4.

Alfonsus Kinge of Sicilie was by this bond commanded to take armes against the fflorentines to revenge the notable indignity w^{ch} they had offered the Pope w^{ch} was for that they had crucified vpon a crosse the Popes nuntio, in his pontificall Robes.

39.
Bodin de rep.
l. 9.

ffor the King of Arrogon had both Sicilies Sardinia and Corsica giuen him in fee vpon condition to pforme homa-

Creiter. c. 30.

gium ligium, vassalagium, plenum, & fidelitatis iuramentum, cum censu duorum millium Marcarum argenti, bonorum et legalium sterlingorum, in festo beatorum Petri & Pauli quot annis Solvendo.

Now then if he that holde feudes of another hath not ma^{ty} much lesse haue these Kingdomes, w^{ch} they hold by investiture wth oath of fidelity: for w^{ch} he sweareth fealty and oweth service, not as Earle, Duke, but as Kinge, and not for any other Lande, for the Kingdome.

These Kings are in noe better condition then are the princes, besides that they are vassalls they are alsoe subiects.

39 *verba.*

And whereas the lawyers doe deliver, that/ a prince in his owne Kingdome may doe as much as the Emp: cann doe in the Empire that must alwayes be vnderstood wth this clause, *Salva Maiestate imperii* w^{ch} clause conserues to the Emperour supreem iurisdiccon. for a armie cann neither make lawes nor move armes against the lawes and command of the Empire neither hath he any thinge of royalty, w^{ch} doth not depend vppon the Empire where he may be both conuented, accused and if he haue committed any thinge worthy condemned also.

We must diligently distinguish between } tributarie
Kingdomes that are } feudatarie

The ignorance or rather dissimulation of this distinction hath been the cause that the Pope do hold that almost all Kingdomes are feudataries to the church because they doe pay it some taxe or pension, interpreting this to be a signe of subiection as princes and all men doe interpret every

small thinge done in favour of them to be much more then /
it is.

Soe Edward the 4th of England did/ account the fifty 40.
thousand crownes w^{ch} he receaved yearly of Lewis the 12th Sr Tho. More
the ffrench King for tribute : w^{ch} yett on the other side hist. Edw.
Cominæus doth soe extenuate, that he will neither call it
pension nor tribute.

Otho the first p^mised and by oath assured his help and Segon. lib. 6
patronage against Berengarius : by and by they [the] Popes hist. Ital.
will haue this to be accounted an oath of feolty.

Ina the Kinge of Saxons in Brittain had p^mised to pay
a certaine yearly pension to the church to the maintenance
of a church and schoole for the English at Rome. Now
Steuchius must straight p^lclaime the kingdome of England
to be made feudatory to the Pope, as, likewise Bodin &
others infer from thence, deceived by the likenesse of
names. for he that makes his land to pay an annuity to
the church, doth not by and by hold it of the church as
ffeude and if he take an oath to pay this wth a generall
fidelity he doth not therby binde himself in an oath of
speciall/ feolty as feudataries doe.

Stewch. lib. de
donat constant.

Bodin. de rep.
1. 9.

40 verm.

When Brzetislaus King of Bohemia was by Hen: the
Emperour countermanded in his expedition against Polonia
he made a good answear, viz^t. that he was bound to pay
the Emperour a yearly tribute of an hundred and twentie
oxen and fifteen markes of silver, but in all other things he
was free from his command.

Munster. lib. 3.
geogr. cap. 492.

Soe the Dukes of Poland were many yeares stipendaries
to y^e Empire, but noe man cann therevpon gather that

Holinsh in
H. 2.

Tritem: cap.
17. Math.
Villan. lib. 10.
c. 98.

Sigon. lib. 18.
hist. Ital.

Munster. lib. 3.
geograph.

they were subiects or feudetaries, such as were the Kinge of Conaugh in Ireland to Hen. 2^d; or Peeter King of Denmarke, to ffredericke the Emperour: or Mahometh Kinge of Granada to the King of Castile, when at his feet he sware homage vnto him for his Kingdome, into w^{ch} he was put to by his meanes.

ffor of these ffedicciary Kings doe we speake and meane when we say that they doe loose Ma^{tie} by their subiection for principes est impar non est. quoth ffredericke the 2^d.

ffor ffredericke Duke of Austria, albeit he was created Kinge by ffredericke the 2^d was not lesse in the feolty of the Empire than before: & whenvpon divers citations/ to the diotts he would not appear, he was in the year following deprived of his Kingly dignity, and not long after putt out of his whole Dukdome.

Cap: 6.

ffrom this, that we haue said, ariseth a new difficulty, no lesse hard, and as pfitable & necessary, for if ma^{tie} be denied to these that are bound to pform feolty vnto others ther seemes not to be any King or prince amongst Christians y^t we cann truly say hath Ma^{tie} because all doe binde themselves vnto their subiects by oath, when they doe enter vpon the gouernments. and diuers doe interprett their oathes to be oathes of fidelity, whervpon the enemies of so^ueraigntye would inferr, that subiects would haue noe lesse right, and authoritie against Kings, if they shall chance not to keep

their oathes then Kings haue against subiects: because say they that by mutuall oathes they enter into contract to one another. Now a contract is violated when the essentiall condition/ of it is not kept. if princes then doe breake the contract by ill vsage of their subiects, subiects also are noe longer bound to keep their oath, because, *qui fidem non seruat fidem sperare non debet*. And in the oath is to be vnderstood the condiçon if faith be kept: w^{ch} is generall in every contract; w^{ch} we are not bound to keep, when he that contracts wth vs, did first fraudulently breake. Neither ought he expect any pfitt from a bargaine that keepes not the condiçons agreed vppon.

Yea the Magdeburgenses doe expressly write that Emperours and Kings are the cheife vassalls of the Empire & Kingdome therefore if the[y] comitt felony against the Empire or kingdome, they ar to be deprived of ffeude in like sort as other vassalls are.

Vnto w^{ch} opinion Hottoman seemes to incline, when he writes that Phillipe of Valois might haue better reasoned against Ed: of England, *ex natura feudorum in quorum ordine sunt regna*.

Junius Brutus disputes this question more subtely when he makes Kings vassalls/ also, but of God: and saith that they doe ipso iure loose their Kingdomes, if they keep not their oath: if they doe neglect God: if they turne to his enemies, as for these and such like causes, as vassall doth ipso iure forfeit his ffeude.

Hence comes that common pverb that every rebell has by hart: treu herr, treu kneiht: & as Brutus saith, bene im-

41. uerm.

Hottom. in
ffran. cap. 8.Brut. vindict.
contr. tyrann.
42.

Aventin. lib. 5.
annal. Boior.

peranti bene obtemperandum or as Pope Gregory the 7th (Hildebrand, or Hell-brand) saith in his oration in w^{ch} he would haue drawn the Romans from their obedience of the Emperour Hen: Asa generall may cashier a cowardly soldier, soe is it lawfull for a soldier to forsake an vniust capteyne.

✓ But sith this is a most fals doctrine p^rnitious to princes, pestilent to comonweales, it will not be amisse to examine & discusse it. for they are not to be tolerated that p^rhibite publicke restraint of offences or w^{ch} doe invite men to offend or doe nourish sinn, or w^{ch} doe p^recipitate the prince, and soe by consequent the comon wealth into manifest danger, both w^{ch} will necessarylie follow if the/ people be allowed right to punish their prince, this opens a gapp to all libertie, licence, rapine, spoile, rebellion, &c. 67

42 verse.

δημιουργός.

ffor what prince in the whole world shalbe found soe p^rfect or (w^{ch} I should rather say) happie, w^{ch} offende not in somethinge, doth not something w^{ch} may be wrested to be against duty & fidelity. Lett ther arise som ambitious minion of the people that seekes to raise his owne fortunes out of the ruine of his King: or some enemy of the publicke peace; or the people it self naturally mutable vnfaithfull and a foe of so^rsaignty: let these clamour that the King hath comitted felonie, violated his oath, hath offered iniury to one, hath neglected to defend another, &c. And in so large a field of accusations, ther will neuer want cause to depose their Kinge.

Dion. lib. 9.

The Egyptians cast Ptolomie out of his Kingdome, because he did too ambitiously seeke to be called Kinge, & a frend of the Romans.

The Ephori fined King Archidamus because he had married a litle wife.

Plut. in Agamemnon.

The old Burgundions held it cause enough to depose their King, if they had/any ill fortunes in their warrs vnder him.

Annu Marcell. lib. 27. 43.

The Gothes in Spaine rendred noe other reason why they put downe their Kinge but that they did not like him.

Armon. lib. 1. c. 20. & lib. 4. cap. 35.

And others ther were w^{ch} vsed to punish the humblest faults of their Kings, wth fasting one whole day.

Alex. ab. Alex. lib. 3. genial. diar. c. 11.

And what I pray y^a was King Chilpericus his fault but only this, quod invtilis esset. and King Hen: the 6th of England; but that he was not capable of so great dominion.

C. Alise. 15. 9. 6. Whetamst. in H. 6.

Ther is not one of the 33 articles, for w^{ch} Mr Hall writes that Richard the 2^d was deposed, w^{ch} may not easily be pind vpon any prince. Bucherius makes this a capitall crime in Hen: 3^d of ffrance, that whereas other Kings were wont to say, noster clerus, noster populus, he said my clergy, my people. And for heresie, w^{ch} is vsually obiected vpon noe ground, w^{ch} doth exceedingly stirr the mindes of the multitude, against the prince, it is most easie to obiect it to Kings, as the Pope did to divers.

Yeild once that the prince is subject to the people, and the vassall of the Kingdome; and then these and such like ar causes enough to arme traitors ag^t them./

Lett any one hate him, and by & by he can devise a crime against him.

43 w^{ch}.

And for as much as ther is a certeyne native hatred be-

tween good & ill men it will follow that the better the prince is, the more danger shall he be in, & the more enemies shall he haue, who are more audacious to doe ill, the lesse they haue either of sound iudgment or good nature.

To the end wee may the better discern the pernicious doctrine painted over, wth a faire vernish of libertie & equalitie lett vs distinguish 3 sortes of oathes, wherewth Ma^{tie} is bound to subiects.

The 1. kind is that oath, w^{ch} is giuen not soe much to all his subiects in generall, as to the church. The scope of w^{ch} oath is twofold, to bind them to the defence both of the true and Chatholicke faith & also of the church. Even the Greeks Emperours were not admitted to receaue their crownes in the church vntill they had giuen good caution of the sinceritie of their faith, especially such as were had in any suspition, as Anastasius Diocorus accused to fauour the heresie of Eutiches, who could not receaue the crowne at the hands of Euphemius, before he had subscribed wth his owne hande y^t he would preserve the Catholicke faith and ratifie the decrees of the Concill of Calcedon.

Baptist. Egust.
in Anastas.

44.
Zonaras. tomo
3. in Anastas.

The like oath did Michaell Rangalis binde himself wth all: as also did Charles the great and many others.

These are noe oathes of fidelity as Pope Clement the 5th would haue vs beleue. for the oath doth alwaies follow the principall nature of the contract vpon w^{ch} it is imposed.

But in those oathes giuen to the church ther is noe

feudall contract, for the Emperour receaves noe feude of the Pope neither doth the taken this oath or his crowning by the Pope, but the elec^on of the princes make him Emperour, and by the same argument we might make the Kings of ffrence vassalls to the Archbishop of Rhemes to whom they giue such an oath when he crownes them.

Papir Masson.
lib. 3. chron.
gall.

The Kinge of Spaine is bound by a cannon of the 6th Councill of Toledo to sweare that he will not suffer any Sarazen not a Catholicke to liue in his Kingdome. will Rossorus hence conclude that Kings swear feolty vnto/ Bishops & that they hold the crowne only by compact, that they will not depart from their oath.

It is one thing to swear fidelity another to swear p^{te}c-
c^on, & ther is great difference between confirming som-
thing by oath, and contracting a new covenant by oath.

Ther is a second sort of oathes w^{ch} these take that are Kings of absolute power ouer the subiects. these princes haue not the power limited & bounded wthin certeyne con-
di^ons, but being of absolute power, they are content for the better assuring of the people of their love, to binde themselves by oath to pforme that w^{ch} the duty of their place requires them.

Such is that oath of the ffrench Kings; Juro ego per deum omnipotentem ac promitto me iuste regnaturum iudicium equitatem & miserecordiam facturum.

Bodin, de rep. 1.

W^{ch} is fullier exprest in the oath of Carolus Calvus & in the comon forme now vsed.

ex relat. pythel
sacre du roy.

And this oath wth more additions is required of some Kings whom they may feare as of Hen: the 5th of England:

in w^{ch} a caution was putt that he should mainteyne the ma^{ty} and liberty of the pliam^t of ffrance./

45. And such oathes Kinges that come in wthout good title and w^{ch} doe desire to purchase the law of their people doe take wth much fuller condico^{ns} for y^e liberty of the people.

But wise Kings w^{ch} haue care to p^{re}serve their Ma^{ty} will neuer be brought to capitulate basely wth their people and to establish and obrogate lawes at the pleasure of the people; such lawes are called pactionatæ Leges vel iuratæ.

Math. Paris, in
H. 3. Holinsh.
ibid.

Hen: the 3^d of England to wthdrawe his Barrons from Lewis the Dolphin of ffrance, was faine to enact the lawes of Magna Charta, & Charta de forresta: and when after ward he had abrogated them, he was faine in the 21th year of his raigne to confirm them.

- Nay the people were not content but before they would agree to giue him any subsidy they made him willing to yeild to haue 4 ouerseers of the exchequer and of his actions putt vpon him wth a Chancellor Keep of the Seale, and a Chiefe Justice: and to enact that what soever was sealed wthout the knowledg of the Chancellor should be void. Such compacts doe marveilously/ diminish Ma^{ty} w^{ch} if it well knowe its own power must doe right wthout compulsion: and not be drawne to doe wronge for any fear or foul meanes.
- 45 10 22.

P. Jobries in
Leon. x.

Well was it said of Charles the 5th to the Pope, that it stood not wth the dignity of the Emperour the greatest prince to receive lawes or to be terriffd wth threats, and especially of these that were subiect to the Empire.

- 1 () The only rule to a prince of altering lawes ought to be

iustice or evident vtility in w^{ch} cases he ought not either to expect the approbation of the people in making lawes, or the keeping of his oath to cause them to abrogate whole-some lawes, but must ever regard what the office of a King doth command him to doe from god, for the good of his Kingdome.

Neither Willyam Rufus, Hen: the 1. or Kinge Steven did ever keep any pmise w^{ch} feare caused them to make or sweare &c.

It is a rule that iuramentum quod dignitatem regiam lædit, pro nullo habetur: It is esteemed for noe oath w^{ch} is given by a King to the hurt of royall dignity. we must then make a/ distinction of the power of Kings: some power pteynes to a prince from the nation of ma^{ty} or sovereignty: another sort of power comes to a prince by a certayn convention and couenant.

C. intellecto de iurament. leg. non dubium. C. de legibus.

All the former oathes of the Kings of ffrance & England doe conteyne nothings in them, that cann be said change or diminish royall power, for albeit they doe not swear yett the kingly places bindes to pforme both pteçon to the church and iustice and vpright go^{ss}m^t to the people.

Now if a prince be bound to these duties by reason of his office, what need is there of an oath, to bin[d]e him? for that w^{ch} divines affirme that God makes noe difference between an oath, and a naked word or pmise, Cuiacius saith it hath place in law also: Cui: lib: 22. observ. 7. nam iusjurandum pro pacto cedit.

C. iurament. 22. 9. 5. gloss. ad. c. pervenit in verb remissionem fidei & iuram. de fidei iussor. et. penult. de iure iur. C. quamvis in fin. et ibi gloss. in vñ.

And if any be vnlawfull by nature, or to redound to the hurt of another, it cannot be confirmed by giueinge of an

dispendium de
pacto. in 6.
L. fin. c.

oath; for iuramentum non auget obligationem
. sed tantum addit religionis vinculum as said
Baldus an oath increaseth not the bond but only adds to
the obligacōn, a bond of religion./

46 *verm.*
A. Gellius,
lib. 2. c. 7.
noct. att.

Therefore as he reasons in Gellius, if they be iust they
are to be done wthout any commandem^t but if vniust, noe
command must cause any to doe them; soe also may we
conclude, if it be iust wth the prince p^miseth by oath, he
is bound to keep it albeit he did not swear, and soe the oath
is idle, neither is ther more force in an oath, then in a
covenant. But if it be vniust, albeit he sweare to doe it,
either deceived or compelled by fear, he is not bound to
the p^formance of it, because iuramentum non firmit
actum iure prohibitum: an oath never makes good an ill
action.

Plin. paneg.
iurat vobis per
quem iuratis.
Cassiodori, de
Theodor.

Princes should like Traian swear willingly of their owne
accord, and must not be compelled, for noe force can be
lawfully vsed to make a supream absolute prince to swear
to his subiects. Neither hath such a prince a superiour
over him to cause him to stand to conditions prescribed to
him: as Buchanan and Rossæus doe falsely suppose.

47.
Æneas Sylvius.
com. 2. 3. de
potest. pr.

A princes word ought to be equal to many wittnesses.
And this is the cause that the kings of England write in
their pattents, teste meipso,/ w^{ch} although Æneas Silvius
doth causelesse deride, yett Albericus Gentilis doth iustly
defend alleaging that place of Augustine De civ: Dei 20,
cap. 26. testem se dicit futurum deus, quia in iudicio suo
non indiget testibus.

And albeit Hen: 2^d King of ffrance suffered one to goe

unpunished whom he tooke in a leud action, because he had noe other witnesse against him, but himselfe yett this was rather his gentlenesse then iustice. As also it was in Africanus who held it noe civility, to be both accuser, wittness, and iudg, against one and the same party. Valer. lib. 4. c. 1.

That then wth princes doe out of their owne indulgence, is not to be made an argum^t that they are to be compelled to it againe, and that because divers swear before they are crowned, erg: they are not to be crowned vnlesse they swear. for they are not Kings because they take an oath but because they are Kings therfore doe they swear.

As Cicero sayth: bees doe not therefore come together, to the end to make hony combes, but after they are come together they doe make hony combes: soe we/ say against Ferrariensis: a prince doth not therefore receive regallity, that he should defend the co^mon wealth: but because he defende the comonwealth therefore doth he receave regallities. And a King is not therefore a Kinge because he is crowned, but he is therefore crowned because he is a Kinge, for wher the Kingdome falls by succession it is a true rule, that the King lives alwaies and never dyes: and it is a decree in ffrance: that the King is by nature designed heire, & succeeds in the rights of the Kingdome and royall honor, before his solemne inauguration and takeing of his oath, and soe the Emper: after his lawfull election is Emperour, even before ever he take his oath.

It is a false position then, that the Kingd. that is due to princes by the right of succession or election doth belong vnto them by compact, confirmed by an oath at their Coro-

47 uerba.
in tract. de feud.
lib. 2. cap. 7.

nation, yett they Magdeburgenses (and Jesuits also) would infer vpon this false yposition : that as it was in the power of the people to creat their Kinge, soe it is in their power also to depose him, because contracts are alwaies dissolved as they were made./

48. But the argument is full of faulta.

ffor first they take for granted that an oath taken at the Coronation, is a contract, w^{ch} is nothing lesse.

ffor if subiects be not subiect to their prince, but by convention, nor then also are cittizens to their country, or children to their parents : because as a father is giuen by nature vnto his children ; and they may not refuse or disclaime him, in the same manner also, is a prince borne vnto his subiects whom the principallity doth naturally descend vpon by succession.

ffurthermore as lawfull mariage cannot be dissolved by the same way by w^{ch} it was contracted albeit parents, friends parties should all agree to vndoe it, because God also is a partie in it, and his divine ordinance, and the p̄iudice that come to the children borne in y^t wedlocke, doe intercede and forbid the dissolution : soe also is it in the mariage of a prince and his subiects ; gods owne ordinances will forbidde the subiects to seeke diuorse from their lawfull prince, albeit he be severe, cruell, wicked. for wee are bound to obey him for conscience sake, for y^e Lord : yea reason also inioynes vs to doe/ the same, for avoydinge pturbation and ruine of the state, from whence might issue greater evils then doth from misgoverment ; and also least right successors might be robbed of their lawfull right. Againe one

Rom. xiii.
1 Pet. ii.

48 verse.

may not goe from his bargaine once made but by mutuall consent of the parties, that are bound to one another, how then can they conclude that it is in the power of the people alone that created their Kinge, to renounce their > contract ; when as they rather are to be punished for what they doe against the contract, against the will of the other party. And further also is it not true, that they may depose, that did promote, as I haue pved already before.

And in that they doe make the Kinge the vassall of the Kingdome, it is an idle conceit, that needes noe confutation.

They that receive the feudes of the Kingdome, are called the capteynes of the Kingdome, but the Emperour is not Capitaneus, sed caput Imperii.

c. va. in pr.
qui feud. dare
poss. c. va.
quis dic. dux.
sist. de regul.
cap. i. n. 70.

And I pray y^a whose oath the Kings or the subiects come nearer to the oath of fealty ? surly the subiects.

What the Kinge owes to his subiects ;/ and in what humble manner wthout demandinge due of contract, subiects should speake to their soueraigne, y^a may see in the Councill of Toledo. we doe wth all humility beseech y^a our p^{re}sent Kinge, and all that shall succeed y^a in insueing ages, that y^a being moderate and mild to warde y^r subiects would governe y^r people comitted to y^r trust wth iustice and pietie. and they giue the reason ; not because wee soe bargained at y^r coronation ; but, that if y^a governe iustly and moderately. both the Kings may reioyce in their people, and the people in their Kings, and God in both. neither doe they threaten privation to them of their Kingdome, as

49.

Concil. Tolet.
4. cap. 74.

✓ the King murthering masse-preists would haue it, but exclusion from the Church, and eternall damnation wth punishment Tirants must expect from the lord of Lords, vnto whose only punishment they are reserved. ffor Kings doe not rule over their subiects by a certayne mutuall contract made between them both, but by an vncerteyne kinde of vnequall obligacōn.

✓ Most true it is that religion of an oath taken is a great
49 verso. bond to keep a King to/ pforme his duty wth conscience : because god is a punisher of piury, but much more greivous punishments in scripture are denounced against tyrants & vniust goſnors. And if those gods most greivous threatens cannot keep them wthin compasse, surely they will care litle for the punishment of p'jurie.

But admitt that this is one mean to keep Kingly licence wthin the limitts of duty yett can it not stand wth their dignity to be compelled to take an oath, as if wee did doubt of, either their faith or word.

Sym. lib. 4.
ep. 65.

Then is faith to be confirmed wth an oath when the trust is called into question. but it is a kinde of sacriledg sayth Williams to call the word of a prince into suspition.

And Foy du gentil homme, is held a kinde of oath.

Cameras.
Cert. 2. hor.
succia, cap. 59.

Phillip Archduke of Austria, swore not to the Chancellor of the ffrench Kinge, when by him he was invested into the County of flanders, Artois Carolus (aſi. 1499) but only answered Par ma foy : aunci le promets, & aunci le ferai./

50.
Valer. lib. 2.
c. 10. & lib. 8.
c. 1.

If the Athenians tooke the bare word of Xenocrates the philosopher wth oath : and the Romans of Maximus &

Metellus shall not wee belecue our princes to whose care, our safety life, body, & goods are comitted, sith a Kings words ought to be of as much credit as a private mans oath: as Alphonsus sayth.

The Esseni thought a man convinced of lying, that was not beleueed wthout god.

Neither cann Buchanan, Brutus, Buchorius or any other of their sort, pduce one example out of scripture, that either Kings did swear or were bound to swear vnto the people.

David indeed made a league wth the tribes Israell but ther is noe word of any oath.

Neither doe I see whenc they learned y^t the meaning and purpose of the league was, that if one ruled well he should be well obeyed: when as David did not ill in obeying Saul that ruled ill.

Asa made a league wth the people w^{ch} did rather binde the people, then the Kinge. But ther is in that place noe more mention of an oath then ther is in the place where Elias is commanded to anoynt Hazael King of Syria & Jehu King of Israell.

Now wee are come to the third kinde of oath/ w^{ch} bindes princes not only to these things w^{ch} doe appteyne to their office, but also doth subiect them to the lawes, and sett certaine lymitts and bonds to their power, so that they doe come to the Kingdome noe otherwise then vpon condition of forfeiture if they doe offend.

In this sort were the Lacedemonian Kings compelled every moneth to swear to observe the lawes.

Panorm. de
dictis & factis
Alphons.
Joseph. de bell.
Iud. lib. 2.
cap. 7.

1 Chron. xii.
2 Sam. v.

so vnto

Xenophon. de
rep. Lacedem.
in lib. 6.

Aventin. ann. 3.

The old Bavarians did in like manner prescribe to their Kinge that he should governe according to the old lawes and customes.

Chytr. lib. 23.
Sax.

✓

Such an oath took also Steven Batorius, when he was to be King of Poland. I swear & pmise that I will keep all the rights, liberties, securities, priviledges, publicke and private &c. And if (wth god forbid) I violate my oath in any thinge, the inhabitants of the Kingdome shall pforme vnto me noe obedience. Yea I doe ipso facto make them free, from all faith & obedience due to the Kinge. I will neither seeke to any one, absolution from his oath: and if such absolution were voluntarily offered me I will not receive it: soe help me God:

51.

Lib. 1 Stat.
c. 2. art. 2.

In the same sort were Hen: of Anioy/ but in a litle milder forme, not soe riged.

And it was noe marveile that Casimire the 3^d was wth much adoe pswaded to take that oath wth did wholly suppress Royall Ma^{tie} and did subiect it to their assemblies.

✓

Arist. pol. 3.
c. 11. 12.

ffor what other thinge is it to swear thus to their lawes and immunities, then to yield them supreame rule and where the lawes doe rule Aristotle tells vs y^t there the Kinge is not a true and absolute Kinge.

Chytr. lib. 28.
Sax.

But that wth is added in the end, that subiects are freed from their obedience if the King in any thing violate his faith, it is a most manifest argum^t that the King hath noe power but by compact, wth plainly appeared in the election of Sigismund the 3. when Zamossius the Chancellor of the K^m did thus speake vnto him. Seing the states doe see that y^r royall ma^{ty} will not stand to the covenants agreed

vpon y^r ma^y ought not to interprett it in ill part, if the states deny all obedience to yo^r ma^y.

Carolus Calvus did not discharge his subiects/ of their 51 *vera.*
allegiance, if he should chance to doe against his oath: but only added these words: if I shall know I doe against my oath I will of myne accord indeauour to amend it. his obligacōn consisted not in a mutuall convencōn, but his power was founded in the right of ma^y descendinge vnto him by succession. but Sigismund had noe title to the Royall title but only by concession & couenant from his subts.

The Sweth-landers doe binde their Kings to soe hard ✓
conditions that he can neither ppound edicts, demande tribute nor cast any in prison, but by the commandem^t and authority of the Senate: neither cann he giue priuiledges, or proclaime warr, or grant gouernments to any but senators: neither can he decree any thing by his owne authority. all these and much more severer things, contrary to royall ma^y the[y] caused John the 3^d to swear vnto. Chytrees.
The Embassadors of Charles the 5th were constreyned to consent to all these condictōns before he could receive the Empire. lib. 2. Sax.

That he should never overthrow, or diminish/ in any 52.
sort, the rights, priuiledges, and dignitie of the princes and Sicidan. lib. 1.
states of the Empire. com.

That it should be lawfull for the electors when need should be to haue meeting among themselves and to consult of the affaires of estate & that he should never hinder them therein.

That he should make noe league or contract concerning the Empire wth strangers, wthout the assent of the 7 princes electors.

That he should neither sell nor pawne any of the substance of the Empire.

That he should keep peace & frindship wth his neighbours and other Kings, and never vndertake any warr for any thing of the Empire, wthout the good likeing of the States, especially of the Electors, either wthout or wthin the boundes of the Empire.

That he should bring noe forreigne souldiers into the Empire wthout their consents.

52 10730. That he should neither call any diott or command custome or tribute but wth the allowance of the Electors./

That he should call noe assemblies wthout the boundes of the Empire: nor call any of the States into iudgment but in the imperiall Diotts.

In a word, noe right of ma^y was left to Charles alone, but in every thing he must haue the consent of the Electors wth whom he receives the Empire, as it were devided.

And this also was not the least argum^t of his limited power, that if he had any action against any State he is commanded to try it by law, & that he might vse noe violence to any who yielded themselves to lawfull triall: that he might prescribe none wthout giuing a good reason: but must be compelled to stand to the sentence of law therein:

[In more abiect manner did the Danes compell Christiern the 2^d to sweare, that if he had any controversey wth the

B. B^a. or their ministers, governours, noblemen, &c. that the cause must be decided by the Senate of the Kingdom. and that he must be subiect to be sued by any one before the Senate, &c. yea it was added in the oath of the King of Poland, as also of Andræs/ King of Hungary, that if they did against their oath, it should be lawfull for the States as well B. B^a. as Noble men and all other to oppose them, as not bound to obey them. And in the oath of the King of Sweueland, the Senate B^a. Noblemen, knights, cittizens, and people are bound vpon their honor and oath, to resist him and rise against him, if he doe any thing against the conditions of his oath, either by himself or by any of his. And thus they covenanted wth Margarite, Christopher Palatine John and others, whom by the law of confederation they chose for the Kings out of Denmarke.

53.
Libell. ordin.
Daniz. de iust.
christiar. c. 2
abdicat.

Chytræ, lib. 2.
Sax.

In this manner the Bishop of Mentz, the Electors of Sax: and Brandenburg wth ambassadors of the King of Boheme deposed Adolphus the Emperour being accused of man-slaughter, violence offered to a virgine, slouth, negligence, periury; and that by a publicke decree. And the like authority the Electors vsed afterward against Wenceslaus.

The Sweuelanders did also depose Ericus Pomoranus Albertus Megapolitanus Charolus Christierne the Dane.]

Chytræ, libid.

In this case where Kings come to their Kingd^{ms} by compact, the people did create, and y^e/ people may depose their Kinge as Pope Zachary wrote to the ffrench: though vntruly in Cilperic's case who came to the Kingdome by succession not covenant. for only in this case of condi-

53 verm. ✓
Aventin. lib. 3.
ann. Boior.

Gloss. in C.
cum ex iniuncto
ver. tam. instit.
de hen. Hel-
mod. chro.
Sclavonia.

tionall Kings, that never had absolute ma^{ty} is the rule of the glosse true Ad quem pertinet institutio, ad eundem destitutio as also that speech of the B^p of Mentz against Hen: the Emp: quem meritum investivimus, quare immeritum non devestiamus. and may the princes authority giue the Empire, and may not their decree deprive also.

Cap. 7.

Now we must consider, whether ma^{ty} doth admitt that he that possesseth it is bound by the lawes and p^rmisses of the predecessor; I mean his antecessor in the same forme of comon wealth: because if the State of the comon welth shalbe changed, ther arises an other doubt whether then these pacts and leagues are to be observed, w^{ch} were contracted vnder the forme of State abolished.

54.

Plut. Themisto.

But our question now is of a successor in the same forme of government for if ma^{ty} be not bound and tyed to lawes, and if one equall haue noe command ouer another, it may seem that the successour, soe y^t he will reteyne ma^{ty} pfect, is in noe sort bound by the acts of his predecessor: And yett we doe see that the contrary of this is every where observed. Artabanus told Themisticles that the Persians made it a matter of Religion and conscience to keep the lawes when once they were made.

Daniel vi.

ffrom this ground and law they reasoned, w^{ch} required that Daniell might be cast into the lions denn. Know, say they to the Kinge, that it, the law of the Medes & Persians, that every decree w^{ch} the King maketh, may not be

changed : wherevpon the King was compelled against his will to yield Daniell to the lions denn, and by the same law were other Kings forced to yield to divers things against their wills.

Now if a King may not goe from his owne lawe much lesse may his successour, who is noe lesse bound to the comon wealch, then his predecessor, and much more if a clause in the law by the successor, as it doth very often.

But I answer, that in all such Kingdomes w^{ch} Kings receive from their subiects by compact they must keep the lawes of/ their predecessors, and may not alter them at pleasure, not for that the power of the predecessor doth binde the successour, but because the subiects did soe couenant wth their Kinge, before he was Kinge. Att w^{ch} tyme they were superiour vnto him, and did binde him to the lawes, for he that gives lawes to another must be his superiour. But the predecessor had noe more power, then he left to his successor; againe it were vniust that y^e predecessor should leaue the condition of his successor worse then his owne was, and deprive him of his due liberty. And the Comon Lawiers, say, that the Pope cannot binde the hands of his successor, because noe mortall man cann iudg the Pope.

Hence it is y^e Emperours and Popes when they could not prescribe lawes to their successors, yet they left them their example, as a direcçōn, not as an obligacōn, as Charles the great, Boniface the Pope, and others have done.

ffor noe man can binde his successor by lawes, noe more then he cann binde himself; for both hath equall power

55

and/ a prince for the good of his Kingdome, may abrogate and alter old lawes & make new.

Sext. Cæcilius.

It were pernicious to a ship, if the m^r of it might not turne the sterne in a tempest.

When Agesilaus durst not condemn any against the lawes wthout renderinge a reason, he made a request to the state that while he did that against the worde of the law, for the good of the State the lawes might in the mean while be silent. And the Lacedemonians to Pericles that said that the lawes of the Athenians might not be abrogated did wth a laconicall scoffe desire him that sith they could not be taken away, yet they might be turned.

The Lacedemonians sware to observe y^e lawes of Licurgus, and the State of Athens to keep the lawes of Solon, yet in both States they changed the lawes vpon better advise.

Halicarnas.
lib. 6.

Soe did the Roman Emp: take away the sacred law from the Tribunes though they had bound themselves and their posterity by fearefull imprecations to observe it for ever inviolable.

55 *verba*.

Herod. lib. 3.

Neither were the lawes of the Persians/ so inviolable and vnchangeable but that, the Kinge by his owne power might do against them, by an old law that they told Cambyeses of that the King might doe what he list.

And when Daniell was delivered y^e King cast his Councellours into the Lions Denn: sheweing plainly that they had cousened him, and that he should not soe inviolably haue obeyed an vniust law: w^{ch} also we see here that the King abrogated by a contrary statute.]

The clause then that seemes to make a law everlastinge, doth but serve to distinguish it from temporary lawes. for neither this or any claus can deprive the successour of his due right & power w^{ch} full and absolute Ma^{ty} giues him. And therefore albeit Dauid had sworne to Shimei thou shall not dye: yett he held not Solomon his successour bound to keep his oath, and therefore when he was a dying he gaue Solomon a speciall charge, saying. Now therefore doe not thou hold him guiltlesse; but thou shalt bring his hore head wth blood to the graue./

{ Hen. 7th King of England would not haue his sonn continue the grace and pardon w^{ch} he had p^{ro}misid the D. of Suffolke at the intreaty of Phillipe of Spaine because in his will and testament he commanded his sonn to be avenged of him. }

56.

Mich. Mount-
tain, esa. lib. 1.
cap. 7.

There are other things, w^{ch} doe phibite a prince to be easie to change: for if the law tend to the good of the State, he must be soe farr from altering of it, that if it were not made, he is bound to make it, sith he is tyed therevnto both by the law of god and man, and by the duty of his place. It is further p^{ro}fitable to the Comon weale that iustice and right be not made vncertaine, by the often alteracō of lawes. And this is vsually obiected of those that doe dislike ambulatory officers: new lords, new lawes, and Livie saith the Emperour changed, makes a suddeine chang of all things.

Livius lib. 5.

Among the Romans the edict of y^e prætor was from the begining nothing else, but a yearly law, but when the State was burthened wth soe divers edicts, w^{ch} did/ mutually

Cicer. in Verr.

56 ~~vera~~.

Dion. lib. 36. destroy one another, and when none could be certaine of law & right w^{ch} the prætors altered at their pleasure: Cornelius the Tribune of the people, made a law that the prætors should be bound to deliver right and doe iustice, by perpetuall edicts. w^{ch} law took much authority and favour from ambitious prætors, w^{ch} were wont to make lawe what they liked, and to giue iudgm^t often, against the custome of their ancestors, and some tyme against their owne edicts: as Cicero objects to berres. And the same must fall out in any state where lawes change wth their princes.

Ascon pædian in argum. Cornel.

Ciccr. in Verr. 3.

And sith Lawes are the pillars and bands of the comon wealth, it must needes follow, that the State must be dissolved, when lawes are vndone at pleasure.

Edward the 4th did vndoe all the acts of Hen: 6th of England. and Henry the 4th of Richard the 2^d reteyning only those lawes w^{ch} the lords, rather then the Kinge had made. Soe Pompey did vndoe all the acts of Lucullus.

57. Claudius of Caius rather in hatred of the men/ then wth an aime at the publicke good. If this alteration and abrogacōn be done wth choise and good advise w^{ch} reiects the ill lawes, and reteynes the good they doe well and as duty requires but because it doth often fall out y^t good lawes are abolished wth evill and that more ill succcede vpon suddeyne change: It was a good resolution of Augustus that it was better to forbear wth some things that are bad, then to descend to a new change.

Dion. lib. 82.

Ciccr. off. 2.

Avatus Sicyonius that had put downe Nicocles the Tirant, if he had abrogated all his decrees, and recalled the old lawes, & putt all out of possession of that w^{ch} the Tirant

had given them: and repossessed the antient owners, he should haue made the comon wealth more turbulent then it was vnder the Tirant before. The like disorder and confusion had Lepidus brought vpon the State, if he had (as he desired and as it had bene well done, if it would haue been affected wthout hurt to the State) vndone all Scilla's acts: and therefore was it requisit that much wronge and great iniustice should be tollerated rather then the comon wealth/ should be involved in a new warr, w^{ch} would haue followed, if all those that Scilla had vniustly condemned & confiscated should haue been restored to their old possessions, and Scilla's favorites put out againe. It was ergo expedient that y^e sicke and wounded State should haue rest however rather than the old wounde should be renued by a new cure.]

Historia. lib. 3.
c. 23.

57. uera.

This is the cause, that many lawes of bad princes, as of Domitian, Comodus, Heliogabulus &c. are still retheyned: for oftentimes ill men doe many things well, yea & we doe comonly observe in England, that the worst princes haue made the best lawes, most advantageous to the people.

Therefore not all lawes ar to be abrogated wthout difference though an ill man made them. but only these that are made against the publicke good.

And as concerning other acts of princes, it is plaine that what the predecessor himself might haue revoked the successor may much more retract: sith an oath or contract made of the deceased doth not binde the heire.

Now a prince may revoke by the civill lawe whatsoever he gaue, granted, promised of his owne liberallity, nullius

ff. de evict.
Carduer. 138.
n. 9. cons. 137.
n. 18. & ali
plures.

M

58. causæ intuitu/ wthout any iust consideraçon or any thinge that turnes to the detriment of y^e State.

Therefore doe the lawiers teach that the successour may recall immodicas donationes. for wth he alleages divers authors heer.

Sweton in
Galba. cap. 15.

Soe Galba revoked Neroes liberalities leaveing the tenthes only to the granters. & if players had receaved any thing of Nero in that kinde, and had sold & spent it he comãded that the buyers should make it good, when they could not.

Belles. lib. 5.
c. 150. 151.

Charles the VIIIth of ffrance, revoked all his father's superfluous donations hurtfull to the royall patromony, and brought them into the exchequer; and caused divers to make good that wth they had spent; and that by decree, in the convocation of the States at Turon he was confirmed. 1485.

Zonor. in
Zemisi.

The Emperour Zimisses took from Basilius the Chamberlaine all that Nicephorus had giuen vnto him, sayinge: that it was an vnworthy thing to suffer an Eunuch a minion to inioy the publicke possessions, purchased wth the sweat and bloud of many braue men.

In small giftes, that are noe p̄iudice to y^e publicke it is better to allow the grants for the conservaçon of the princes credit & faith.

58 verso.

Plut. Eumen.

ffor nothing is soe needfull to a prince as good/ reputa- tion, and faith, in keeping his word and p̄mise wth King Eumenes made soe high account of, that he did avow, that he would rather loose his life than his faith.

Well known is that sentence in Ecclesiasticus, cap. 42.

husbands must be ashamed of whoredome, princes of lying.

Old S^r Drue Drury was wont to say what is a woman wthout her honesty, & a man wthout his word and credit?

Take away faith from men, and overthrow all society, Livius. lib. 6. sayth Abp. Claudius.

And as the Romans raised their Empire to that height by many other vertues, soe by none more then by faith, Gellius. lib. 20. c. 4. as well publicke as private.

Baldus hath this markeable saying: It becomes princes, pettie gods, to keep that word of god: God once spake, &c., in consil. 327. and to say quod scripsi scripsi and ergo a prince must haue a. 4. vol. 1. but one penn, one tongue and noe more, and must be like the corner stone, or Pole in heaven vnmoueable.

It was well said of Julian; as I am slowe to condemne soe am I much slower after I haue condemned to pardon./ Am. Marcell.

Livius Salinator did inter ærarios relinquere vel ærarios facere did depriue them of their freedome, and subiect 59. them to all taxes and toules, as strangers, the whole people Liv. lib. 29. of Rome, except the Metean tribe, because they had first condemned him, and yet by & by after did creat him Consul & Censor: for they could not deny but that they had offended either once in their Judgment and sentence, or twice in their Eleccōn.

What would this Censor haue done to Pope Celestine, Bald. cap. 1. who as Baldus saith was wont to grant a favour in the de nat. feud. morning and to recall it in againe at night.)

➤ But the Ciuill law doth soe presume of princes con-

stancy that if he doe lawfully giue anything to one, and shall chance to giue the same to another afterward, the latter donation shalbe void: because it is to be supposed, that either he forgott himself, or was deceived, for other wise he would not haue done against the noble and naturall staynesse of princea.

59 *verm.*

Albeit a prince out of his transcendent power might recall what he had giuen either for desert or service, yett is it not for his/ honor to doe it because it makes others the more vnwilling to serve him, and alsoe obscures his faith and reputation in other things.

Bald. in L.
princeps. ff.
dec. L.

If a prince keep not his word, none will trust him and soe he should be, ab omnibus exul, qui est omnium præsul. And that w^{ch} men see a prince doe against the acts of his predecessour, they may fear his successor may doe against him.

But for a contract or bargaine of the predecessour it doth binde the successor, vnlesse it hath been made to the very great preiudice of the Comon wealth, for contracts binde princea as well as private persons: and a prince cannot vndoe them wthout iust cause, sith in this case, he is but a private person. And it is the voice of nature, right and iustice y^t contracts made in good faith, canot be dissolved: and soe a prince cannot vndoe them.

fius privatus
ærarium pub-
licum.

60.

But that we may vnderstand this question more plainly we must distinguish inter Res fisci & ærarii, that is, between the/ private, and pper good of the Kings owne exchequer and the publicke treasure of the whole kingdome.

Contracts De rebus ^{fisi}, bindes not the successor in the kingdome, but the heire of the exchequer, to whom a prince leaues not his kingdome, but his private good as his executor.

for it is a rule in the law: Defunctus et Hæres vna persona sunt, et possunt convenire et conveniri, et filius obligationibus fraternis, si non sit hæres exuitur, the sonne is freed of his fathers bonde, if he be not his heire.

L. cum a
matre c. de
re vidua.

But in hereditarie kingdomes, the sonn is bound to pay his fathers debts. for hæreditas non aditur, nisi tota. and he y^t hath the benefitts of inheritance must also bear the burthen.

Cassiodor.
lib. 4. varr.
epist. 10.

And also all contracts made for the honor and comōdity of the comon wealth, doe binde the successor; for the[y] are not contracted in personam sed in rem. and erg: they doe not dye wth the pson but doe passe over to the successor.

The summe of this discourse is this.

That a prince w^{ch} hath ma^{ty} is not bound/ by the decrees of his Antecessor quod jura maiestatis & statum imperii: but only soe farr forth as the publicke good and the lawes of god & nature, doe require. And a prince must aime at this end in all his acts, that he keep his honor and word, and that the comōn wealth take noe hurt. And he is bound to confirme all contracts, w^{ch} are made in the name, and for the honor of the Kingdome. But in other things w^{ch} pteyne to the private goods of his predecessor, he is not bound, if he be not heire of the goods or the sonn of the deceased.

64 veru.



THE SECOND BOOKE.

De iuribus maiestatis maioribus.

What & how many the rights of Ma^{ty} are.

61.



HERETO wee haue spooken of Ma^{ty} in genere, nowe wee will come to deliver it in specie.

The Lawyers doe affirme, maiestatem esse individuum, and Dion saith, that y^e Comon wealth, cannot be divided, wth Bodin, and Mr Dr. Hayward doe rightly interpret, as if they could not be severed from hime that doth possesse supreme power.

The metaphysickes doe distinguish inter

{	Indivisibilia y ^t cannot be divided.
	indivisa y ^t are not divided.

Ma^{ty} taken together wth all his parts, doth constituere vnum quid, quod est totum potentiale indivisum: & ergo: it cannot be divided, to many in the Comon wealth, yet this lets not, but that the parts vnited in the whole may be secerned and severally divided amonge many.

Dion. lib. 57.
Bodin. 1. de
rep. c. vit.
Heyss. in dis-
cuss. de relig.
ad Ma^{ty}
ptinent.

ffor there is one power of creating officers another of making lawes, another of making warr, another of overseeing the Treasurie, w^{ch} if one would confound & make inseperable, he should as well mingle all offices together, Treasurer, Chancellor, Judg, Major, &c. all w^{ch} are vnited in/ Ma^y but are diuers amonge officers.

These parts of Ma^y w^{ch} wee purpose to intreat of haue diuers names.

Cicero calls them most rightly Jura maiestatis, Livie Jura Imperii, Tacitus sacra regni, Guntherus, Jura regia, the Cannonists, regalia, w^{ch} regalia is taken oft in a more strict sense also: wee in England call it the Kings prerogatiue.

We may not imagine that Kings haue royalties by concession as rewards of their labour for governinge: for soe may Vice-royes dictators, Decemviri, protectors, haue them for the tyme of their rule, yet haue they not regalia properly and truly. for who soe hath iura Maiestatis truly hath them proper and perpetuall not as rewards of his labour, or allowed him for a tyme, but as things inseperable from Ma^y w^{ch} attend it as the shadow the body for they doe flow out of the nature of M^y w^{ch} beinge the Chief head of the Comonwealth, and governinge althings, must haue these things in his power, w^{thout} w^{ch} gouernment cannot subsist.

And wee see that both in Aristocratie and Democratie, the whole Comon wealth possesseth royalties, and yett not the whole Comon wealth but the officers of it, doe vndergoe the labour of government./

62. / They assigne a better cause that say, that princes haue regalia giuen for defending the Comon wealth.

But a prince is not bound to defend the Comon weale, because he receaueth royaltyes: but rather because he is bound in regard of his office to defend the State, therefore are royaltyes to be giuen vnto him, wthout w^{ch} it is impossible for the Comon wealth to stand.

Vulterius,
lib. 1. feud.
cap. 5. n. 7.

Another adds that royalties are granted to Kings in signe of preeminence, and for the dignity of the Empire.

But albeit dignity and preheminence do attend Ma^y for it is not by vertue of his dignity, but by vertue of his absolute power, that he doth conferr Duke-domes Marquess ships &c: doth make Noble legitimate, creat magistrates.

62. verum.

Many princes doe inioy great dignity who are yett destitute of that supreame power w^{ch} is requisitt to the right of Ma^y soe that wee may more truly, and to the purpose say, that Royalities are rather Jura potestatis, quam dignitatis. And so as farr as their generallity will pmitt, may well be defined thus: jura maiestatis sunt potestatis summa, quibus is, qui superiorem non agnoscit, rempub: absolute moderatur, et publici ad eam rem/ tributis redditus: that is Rights of Ma^y or Royalities, or supream powers, by w^{ch} an absolute prince doth absolutely gouerne his dominions, wth publique renewes for the maintenance of his Ma^y.

Orat. ad Valent.

The truth of this definition cannot be pceived, vnlesse we first sett downe the diuers kinde of rights of Ma^y or royall prerogative, concerning w^{ch} there are soe many and diuers opinions of Philosophers, Lawyers, Historians &c. ;

that if now Themistius were alive of whom it is recorded that he sett downe 300 seuerall opinions of y^e Philosophers concerning god, he might finde moe of this question.

Socrat. lib. 4.
c. 27.

first lett vs hear Samuell pounding the rights of Ma^{ty} to the people, when vpon wearines of the present estate they desired a King instead of a iudge, a monarch for a magistrate, and when themselues might haue been Soſſaigne, they had rather put themselves in servitude.

1 Sam. vii. 11.

They that thinke that Samuell did sett downe non iura Maiestatis sed iura Regis, are easily convinced of error, sith that the rights of a Kinge and of Ma^{ty} differ nothing at all, where the King hath absolute power of a true Kinge./

And albeit all rights of Ma^{ty} are not set downe in that Chapter of Samuell, yet such are expressed by w^{ch} an estimate may be taken of the rest.

Yea moreover absolute power is contained in the words of the text because althings are putt into the hands of the Kinge.

for least the Jewes should be ignorant of how great power they did desire to be vnder, Samuell setts before their eyes the whole absolute power of a Kinge. 1. Sam. & which afterward being reduced into the forme of a law, he laid vp before the lord, that is the house of god to be kept before the arke; that as St. Gregorie saith the punishment might be committed to perpetuall memorie. & albeit Gregorie make some question whether Lex regis and ius regis be to be held for one & the same, yet Josephus decides the controversie saying the prophet wrote the euills

1 Sam. x. 25.

Gregor. lib. 7.
c. vii. expos
in: 1. Regum.
Josephus antiq.
Judaic. lib. 6.
c. 5.

w^{ch} should befall y^m & read it in the hearing of the King, & laid it vp in the booke of the Arke of the Lord y^t it might remaine a testimony to the posterity of the things w^{ch} he had foretould them.

Divers doe interprett *ius vel iudicium Regis* 1 Sam : 8 : 11. *per morem seu consuetudinem* as if he should say this shalbe the manner custome and fashion of y^r Kinge. but this interpretation is farr from the mynde and words of Samuell.

ffor vseth not that also to be the manner and custome of other Magistrates? as Tiberius said of his officers: *De-glubant populum quem tondere tantum iussi sunt* they doe fley the people, whom they should but fleece. Doth not Jotham compare Abimilech to a bramble? Let fire come out of the bramble, and deuoure the/ Cedars of Libanus. And did not the sonnes of Samuell himself, giue themselves to couetousnes, receive bribes & pervert iudgment, insistinge in the stepps of y^e sonnes of Heli.

It had been idle in Samuell to call that *ius Regum* w^{ch} had been *ius iudicum*, if Kings in this case might haue had noe more liberty then iudges. ffor if all this right be tyrannicall, and an abuse of royall power, it may be the same in all other Magistrates and officers, w^{ch} may exercise tyranny, and abuse their power wrongfully. But it was Samuells meaninge to put the people in minde, that Kings would vse greater licence & challenge more authority when they would vse their prerogative royall: soe that it appeers heer, that by the name of (right) Samuell ment *potestatem iure concessam*, power given by due right; w^{ch}

63 verse.
Judges ix. 15.
1 Sam. viii. 3.
1 Sam. 2.

yett was pnitious to the people, w^{ch} S Gregorie doth prettilie expresse, when he calls it *ius regium Tyrannorum* : he calls it *Regium*, because it pteynes to all Kings. Tyrannicum because it doth easily degenerate into Tyranny vnlesse it be vsed in due tyme & place and wth moderation. ✓

Halycarnassus calls the dictatorship, w^{ch} was a short kinglie rule, a tyranny, because it was an office, that had for the tyme/ as much power as any Tyrant ; for it was about all lawes, & exempted from all giueinge an account for what it did. 64.

There was but this difference, between a King and a Tyrant, saith Seneca. *Species ipsa fortunæ & licentiæ par est nisi quod Tyranni ex voluptate Sæviunt : Reges non nisi ex causa et necessitate. quid ergo : Non Reges quoq, occidere solent : sed quoties id fieri publica vtilitas persuadet. Tyrannis Sævitia Cordi est.*

Senec. de clem.
lib. 1. cap. 11.
12.

Valour consists in vndergoeing dangers, as well as rash audaciousnes : & a liberall man spends his substance, as well as a prodigall foole, but the former two keepe themselves wthin lawfull bounds, and square but their actions by honestie & reason ; but these second wthout all respect of good, honest or vsefull ends, rush headlonge after their owne pleasures, lusts, and liking. The like ends haue Tyrants : and soe he differs from a true Kinge whoe will not doe what he may doe. ✓

Arist. 3. Ethic.
c. 10. & 4 Eth.
cap. 1^o.

How many things may a man doe, that are not against law, & yett are against good conscience. Erg : saith Tully to the Judges : It is a pointe of wisdom to regard quid deceat vos, non quantum liceat vobis.

64. torn.
Cicer. orat. p.
Rebr.

Deutr. xxiv.

It was lawfull to the old Jewes to put away their wiues, wth a bill of divorcement when they did not like them: but Christ told them it was not iust and equall.

Mathe. xix.

L. in caus. lb.
idem pompom.

L. sic. id. 7.
de rescisid vend.
c. cum dilecti.
pen. de empt.
& vend.

The lawes allowe buyers and sellers to circumvent one another; vnlesse the one be defrauded to halfe the price. yet Baldus and wth him all Christians knowe that permission of lawe excuses not conscience.

It is lawfull for the Kinge to take the Sonnes of his subiects to place them in his Chariotts, to make them Horsemen &c., and to take their feilds, vinyards &c. and if he doe this or the like, who will say quid agis? or who cann call him to an account, who is only accountable to heauen? Erg. saith David Psal: 51. Sibi soli peccavi. quia Rex erat, & alium non timebat, vinculis legum solutus; sayth S^t Hierome and Ambrose.

Yett it is against equitie, that the Kinge should vse his whole power, but must bound his boundlesse authority by iustice &/ reason of his owne accord. Therefore is Achab worthyly condemned for his uniust possessinge of Naboth's vineyard, though his greatest fault was by getteinge it by murder. and the Jewes had a peculiar law of god, that did expressly forbidd alienatinge of lands and possessions from one Tribe to another. And this divine law was a lett to the Kinge, to vse his kingly lawe. Neither was ther any coulour of publicke respect to excuse Ahab, w^{ch} alwaies enables Kings to vse the fullnes of their power iustly.

Number vlt. c.

There was also another law written in the 17 of Duterono: w^{ch} David on his death bedd doth rather commend vnto his Solomon, that other of Samuell; w^{ch} we haue

spoken of; because that of Duter: was *Lex parandi*, this of Samuel *lex imperandi*, that was for Kings to obey, this for subjects to be subject unto. that shewes what Kings should doe, this what subjects should suffer.

Brent. 1 Sam.
Homil. 27.

In that Lawe of Deutronomy, the power of the Kinge is bounded. Lett him not multiply vnto himself horses, nor multiply wiues to himself, nor gould nor silver/. he must learne out of gods bookes, the copy whereof he must keepe wth him, to fear god, and to take heed that his heart be not lifted vp aboue his brethren, and that he turne not aside from the commandement.

Deut. xvii. 16.
17.

65 vers.

This Law diuers would haue to be directly contrary to that of Samuel & would thereby proue, that all that w^{ch} is ppounded of Samuel is Tyrannicall. w^{ch} is false. for there are there certaine things reckoned, w^{ch} if the subjects should deny to princes, the comon wealth could not stand.

ffor what if subjects should deny tenthes, that is, tribute approued by the law of god? or would not regard the prince, or follow him when he would lead them out to warr; or should refuse offices and Captainshippe, in w^{ch} he would place y^{em}. or who at this day will deny, that a Kinge may command his subjects to doe him service? or who will not rather hold that he doth his subjects wronge if he doth not accept of their service affore strangers.

Who is soe simple that he knowes not/ that wee are bound to serye o' prince wth our bodies and our goods; who is bound and ready to defend vs wth his life and goods.

66. ||

And in case of necessitie there is noe doubt but that the Kinge may impose hard things vpon his subiects, albeit it be ag^t the positive and written lawes : quia necessitas tollit omnes leges.

But Samuel had another intention, who laboured to fear the people from desiring a Kinge, by settinge downe the severe right of a Kinge. for if he would haue had the people to vnderstand him, to speake of that right Kings may vse in case of necessity, he had propounded noe terrible thinge ; nay nothing but y^t wth every ruler of a Comon wealth, whether he be prince or magistrate, may lawfully doe, wth very good reason.

Melancthon.
Cunerus Barclay.
Waromundus ab Errenberg.
Tholoe^r. Alber.
Gentilis. &c.

66 vers.

Bonif. decad. 4.
lib. 9.

Dionishalicarn.
lib. 5.

Plut. in Cat.

Wee must ergo say wth many excellent authors, that it is one thing wth a Kinge may doe : wth Samuel propounds : another what he ought to doe, wth Moses iniouynes.

Many things peculiar to Tyrants, may a lawfull Kinge be compelled to vse ; as to guard himself wth forreigne force when his subiects are turned rebells ; as/ to vse great severity & rigor, when it is more needfull and requisit then lenity : as to keep vnder rebellious subiects wth an iron rodd. The Nobles of Hungary haueing elected Vladislaus the 2^d for their Kinge, told him that he must remember one thing especially, wth was, that he must rule a warlike and feirce people, wth must be ruled wth an iron Scepter.

When the Romans created their first dictator, they chose a man who knew how to gouerne severely &c.

The elder Cato standing for the Censorship wth 7 other noble competitors wth gaue the people good hope of lenity

& indulgence, did on the contrary crie out; that the City had need of a stronge purge; and exhorted the multitude if they were wise, not to elect a gentle, but a sharpe Phisitian, such a one as himself, and Valerius Flaccus were.

It is apparant that a King & a Tyrant haue both like lycences; but here lies the difference: that a Kinge vses it vpon good cause only, a Tyrant at his owne/ lust & pleasure: further ffalse is their assertion, that doe affirme either Samuel to haue been a Kinge, or Saul a Tyrant. for would God haue giuen the people, or sent Samuel to anoynt them a Tyrant, nay is it not reckoned for one of gods blessings to Israell, y^t he gaue them Saul to be their Kinge. Act: 13. 21?

Neither were the Asian Kings, ever or most what Tyrants; as appeers by many excellent testimonies of theires; as of Antigonus, who when a flatterer told him, omnia regibus licere ac semper licuisse repressd him thus: Ita quidem Barbaris, sed non nobis. And of Antiochus the 3^d who wrote to his officers, that they should then, & never else obey his commandements, when they did agree with the lawes.

Plut. apothegm.
Rhod. lib. 23.
c. 14.

It is then evident, that that place of Sa: prescribes, ius regium, non Tirannicum: and conteynes these rights of Mat^{ie} w^{ch} wee now treat of. I doe ergo bringe, this as the first place, out of w^{ch} we may collect iura Maiestatis.

Aristotle in his politickes lib. 4^o cap. 14/ setts downe 3 parts of goverment of a State w^{ch} doe all belong to Ma^y.

67 verba. ✓

V

Εκ 4 ος το 8. 5.

first. το βουλευόμενον περί των κοινῶν
that is power of counselling or resolving of all things
that belonge to the publicke good, vnder w^{ch} he compre-
hends power of makeinge peace or warr, of makeinge or
breakeinge leagues, establishing or obrogatinge lawes, of
puttinge to death, banishinge, confiscation of goods, call-
ing to accounts.

Secondly. τὸ βουλόμενον περί τας ἀρχάς
that is absolute power of creating Magistrates and officers,
resolvinge who shalbe, and how, and what power they
shall haue.

Thirdly τὸ ἀχάζον . power of iudgment and iurisdiccōn.
All these and the chief heads of the rights of Ma^y His-
torians doe sett downe the rights of Ma^y thus.

Dionys. Halycarnassus expresses 4 sortes, vnder w^{ch} he
comprehends the rest.

1. power of creatinge magistrates.
2. power of makeinge or abrogating lawes.
3. power of concluding peace or warr.
4. power of iudging all causes pteyninge to the State,
wthin or wthout./

68. Polybius in his 6th booke and Tacit. Annal : 4 haue the
like. Suetonius telling how Tiberius reserved antient Ma^y
to the Senate, setts downe also in what he places Ma^{ty}.

Suet. Tiber.
c. 30.

There was nothinge soe litle or soe great, but he referd
it to the Senate, as of tributes and of monopolies, of build-
inge or repaireinge of publicke workes, of chosing or dis-
charging souldiers, of the description of the legions, &
auxiliaries : & lastly to whom rule should be proroged or

extraordinary warrs committed, and what forme should be used in answearing the letters of Kings.

Dion reckoning all the aforesaid to be in Emperors adds two more that they had: 1. power over all religion, to dispose and order it. 2. to be free themselves from all lawes.

Dion. Cass.
lib. 53.

Politicians in their writeings ascribe all these rights, and prerogatiues to all that haue absolute Ma^y.

To make lawes to decree warr or peace, to creat officers, to haue supream appeales made from all to themselves, to receive fealty & homage, to coyne money, impose tributes, & customes, to haue all wrackes & felons goods, to giue leaue to haue faires & marketts, to giue letters of Mart. to be free from/ lawes, to send Ambassadors, to haue power of life and death, right over establishinge of religion, pardoninge, soe also power over high waies, rivers, seas, ports, vacant goods, salt, Treasure Trove; power of making Noble, legitimating, restitution of honor & bloud, makeinge proctors, establishinge Citties, Castles Universities giueinge of Ecclesiasticall benefices, naming of B. B^s receiueinge the reuenues in the vacancy, right of huntinge &c.

Bodin. cap. vit.

68 verm.

The rights of Ma^y } maiora { greater
are divided in Jura } & { into rights } &
 } minora { lesser.

The greater are these in w^{ch} consists the supreme power & dignity of Ma^y for Ma^{ty} consists not soe much in dignity & reverence and in power and authority.

All suprem power } ruleinge the State } y^t is } peace
consists in 2 thing^s } or } either in } or
either in } defendinge it } warr

Defence of the Comon wealth consists in armes, w^{ch} doe compell the obstinate & ill, to obey Magistracie, and doe drive away forreigne force, and redresse forreigne iniury.

To this right of armes, it apperteynes to proclaime and make warr, to make and to dissolve peace, to enter leagues, to send and receave Ambassadors, to rayly armies &c./

69. The goverment of the Comon } lawes and magistrates.
wealth consists in 2 things }

1. In makeing lawes, to w^{ch} belongs besides the power to enact lawes, to giue honors make Noble to legitimate, to restore to bloud, to giue priuiledges, to pardon offenders &c.

*in causis essen-
tialiter subordi-
natis inferior
non querat nisi
querante prima
Arist. 2.
metaph.*

2. In appointeing and authorizinge magistrates, w^{ch} con-
teynes iurisdiction, Impire, highest appeales, giueing of
power to all subordinat officers, w^{ch} power must issue from
Ma^{ty} as the fountaine of all power, establishing iudgments,
institution of societies, fealties, &c.

There are 3 essentian } creatinge Magistrates
rights of Ma^{ty} acknowledged } makeinge of Lawes
of heathens } decreeing of war or peace.

To w^{ch} we may add } coyninge of money
other two also, allowed of } authority of establishinge
divines } and maintaininge of religion.

This last god doth expressly teach vs doth essentially
pteyne to soueraignty, sith every absolute prince may be
and is bound to be *Custos vtriusq; tabulæ Legis divinæ*.

Yea further nothing doth more conduce to the happines
and quiet of the Comon wealth, then religion: w^{ch} even
Aristotle doth acknowledg to be one of the best parts of

the State, and the best conserver of societies, as Lactantius doth observe./

Thus much of the essentiall & high rights of Ma^{ty}: of 69 *vern.*
inferiour rights, as of all things belonginge to the Exchequer & treasury, I will treate in a peculiar chapter. ^

Second Chapter.

The greater rights of Ma^{ty} w^{ch} are called mere regalia, doth soe cleave to the bones and person of an absolute prince, that they cannot be separated from him wthout destruccoñ of him noe more then can the sun beames from the sunn, and so cannot be transferd to the subject. for supream iurisdicoñ is of that nature that it cannot be shared. ffor these rights make the essentiall difference between subiection and soueraignty, so that confound them, y^e bring them in confusion.

Soueraignty cannot be yeilded to subjects: for then we should leaue noe difference between them and their rulers, and that would bringe in Anarchie: quando omnes pręcipuunt [= pręcipiunt] nemo exequitur. And also Ma^{ty} should haue noe subjects if rights of Ma^{ty} were communicated to them. for sith it is true, that par in parem non habet imperium, and also sith we must yeild/ them to be equall: 70.
quorum iura sunt equalia. It is plaine that subjects by beinge ptakers of soſtaignty are equall to Ma^{ty} and Ma^{ty} perishes; ✓
even as god should cease to be god if any could be god besides god, and of equall power of Ma^{ty} for heerin consists the very notion and difference of god, that god is superiour

Tact. hist.
lib. 3.

and more excellent then all others. even soe I say Ma^y ceases to be Ma^y if any equall power be put vpon it, for to haue equall power destroyes the definition of Ma^y.

Tacit. ann.
lib. 4.

But we see that extrema provocatio, last appeales, are granted by Tiberius & Adrian to the Senate of Rome, by Philipe the Faire, to the Court Parliament of Paris, and by Charles the 5th to the Senate at Millaine. And diuers other officers and iudges, haue such absolute power granted to their places that none may appeale from them.

Soe alsoe diuers Citties haue power to make lawes, and to establish religion amongst themselves, and diuers princes may haue assemblies and Diotts; as haue the Hanse townes and other princes. soe alsoe the right and priuiledg of coyning of money, as diuers princes of Germany, & Citties of Italy, doe governe their Comon wealth as they please & make them magistrates./

70 vers.

But in a word, these princes and Citties in their territories are as princes and monarchies.

And Erg: they ppound two waies by w^{ch} subts may haue these regallities: 1. concession & grant, 2. prescription.

But I will shew, that neither of these cann giue vnto subiects Royall rights.

1. for concession: It is certaine that a prince cannot though he would, grant either to a stranger or a subiect, these things in w^{ch} y^e force and vertue of principallity consists: the reason is, for that acts of princes that tend to the diminution of the Comon wealth cann by noe right subsist; and especially if the grant be made to subiects: for Donatio incapaci facta est inuutilis, as Lawyers teach.

again subjects cannot receive these things, by w^{ch} they are exempted from obedience; for then they should not abide subjects. And it is plaine also that none by priviledges are exempted from the number of subjects: and if the prince would exempt them, yet may he not doe it because that his action would tend to the vndoing or makeinge worse of the State.

ffor this cause, the grant made by Rudolphe the 1 Emperour in w^{ch} he sold to the States of fflorence & Luca, all liberty and/ exemption, was an infamous act, dishonorable and of noe validity, to tye the successor.

Tithem. Cus-
plan in Ru-
dolph.
71.

ffurther all liberty granted vnto subjects is alway to be vnderstood wth this clause: *salva superioritate, vel salvo iure imperii*: w^{ch} though it be not added yet must ever be vnderstood. And the interpretacōn of priviledge must not be turned ag^t the Authour of it. it is also absurde to imagine, that any is soe blockish, that he will make his subjects his equalls. And also it is a true sayinge, that *nec iurisdictiones suprema, nec sacra sanctorum sunt in marsupio principis* that he may spend them at his pleasure: And Historians doe conclude, that noe other liberty was sold to the States and Citties of Italy, but such as stood wth feolty and obedience; and they had only a grant to order the State; make officers & lawes not contrary to the lawes of the Empire. but in these priviledges is not conteyned absolute Ma^{ty} and for priviledges granted to strangers, they are not granted in the Comonwealth of the strangers, but in a forreign State.

Rolland, a vall.
cons. 1. n. 115.
vol. 2 ex bald.
Blondus Cus-
plan Cranz.
lib. 8.

It is also absurd to say that the Duke of Savoy hath

71 verso. imperiall rights in his/ owne Dukedome, and yet to mainteyne, that he is there vicarius imperii. for these two are contrary to one another.

ffor the Emp: did creat Edward the 3^d Kinge of England, vicar of y^e Empire, and the Kinge of Sicilie admirall, y^t is his vicar at sea; but he could neither of them, his vicar in their owne Kingdomes in w^{ch} they acknowledged noe superiour, w^{ch} they must haue done if they had acknowledged themselves his vicars there.

And for the Duke of Savoy, he is a vassall of the Empire. and his Ancestors received first the title of Counts from Henry the Emperour, & after of Dukes from Sigismund.

And for the second pretext of liberty, w^{ch} is prescription, I must tell y^e that it is soe vncertaine, whether the supreme rights of Ma^{ty} can be held by prescription, that he that laies the foundation of his right therein, must needs confesse that he builds vpon an vnstable ground.

Many lawyers of great authority do deny that these rights that belonge to Ma^{ty} in signe of supreme iurisdiccoñ can be prescribed:

72. And Erg: subiects as they are subiects cannot prescribe Ma^{ty} because these things can never/ be prescribed w^{ch} cannot be possessed by comon right.

And as in donations or grants, he that it is lawfully made vnto, must be capable of it. soe much more is it requisit in prescription: that he that will prescribe must be capable of the thinge that he would prescribe.

And for this very cause doth Zabar: consilio 89 deny that a lay man can prescribe right to tithes, albeit per tem-

pus immemorale, because a lay person is not capable to receive tithes: nec tempus capacitatem addere potest.

Bald. in L.
omnes in Im.
C. de prescrip.
30. 40. an.

By this argument doth Panormitane mainteyne the opinion of the Archdeacon, who denyes that lay men can prescribe ius patronus, because that right is spirituall of w^{ch} lay men are vncapable.

But those that are of the contrary opinion, doe retort the same argum^t. sheweing that lay men are capable of possession or at least as it were of possession of this right, w^{ch} is sufficient to prescription.

But a subiect as farr forth as he is a subiect, cannot be capable of Ma^y because thereby he should cease to be a subiect. And/ also quæ non sunt concessibilia, non sunt prescriptibilia. Habet omnis præscriptio aliquid iniquum sayth Baldus, because it bends against naturall & positive iustice; and soe it consists, in iure bono, sed non æquo. when it defends a man agaynst the true lord of the thinge, and doth enrich him wth anothers losse: and soe doth not consist wthout the losse of another, & some kinde of iniquity.

72. corn.
Bald. in l. 1.
§ pueritiam.
ff. de postul.

Dico sunt essentialia legitimæ præ- } bona fides
scriptionis } legitima possessio.

1. there is noe prescription wthout possession, for, Tantum vulgo dicitur præscriptum quantum possessum.

2. that w^{ch} was ab initio nullum or naught, noe leng^h of tyme can make it good. soe y^t bona fides sola est, quæ sustinet præscriptionem.

Yett goods ill gotten in the beginninge may be excused per bonam fidem & pfectam ignorantiam of the succeeding

possessor. both wth they must proue, that doe alleadge prescription for keepinge any thinge.

But if ther consciences doe accuse them to want pfect ignorance, for the getting of their goods and lands by their Ancestors; or good faith for the possessinge of them, noe prescription makes them lawfull owners./

73. And Erg: the Helvetians, Citties of Italy &c. wth haue drawn themselves from the Empire, cannot defend their titles by prescription, sith they haue not proued, bonam fidem et possessionem, and haue bene often cited as subiects, &c.

Bodin. lib. 1.
cap. 9. de rep.

When Pius 4th the Pope would haue created Cosmus Duke of Florence a Kinge, Max: the Emp: answered: that Italy had noe other Kinge but Cæsar.

Immemoriall prescription for regality, is scarsly admitted vnder lesse then an hundred years. And Erg: they that haue wth in the memory of man, acknowledged a superiour can alleadge no prescription for their liberty.

Subts then cannot haue ma^y nor power of ma^y: for that should exempt them from the condition of subiects, wth cannot be done, *salva republica*.

They I say may not haue communicated vnto them power of making or of abrogatinge lawes vniversall, or makinge warr or peace, supream iurisdiction: for these pertaine directly to royall ma^{ty}.

- 73 *vers.* But such things are but some parcells of these only as to legitimate, to make doctors/ and Notaries, to institute lesser officers and magistrates, to coyne money, to minister Justice: sith they may be granted wthout destruccon of ma^y

subiects may haue y^m by concession, & yett still contynue in the state and obedience of subiects.

ffor ma^y doth alwaies reserve to it self supreame right, w^{ch} is the meaninge of Lawyers, when they say that iurisdiction may be granted of princes, cumulative sed non privative.

Soe God the supreame monarch of the world, albeit he hath planted a proper power in inferiour causes, yet he alwaies concurreth wth their actions, ag^t the opinion of Durandus: sith God is every where; secundum præsentiā et potentiam. And these operations that worke by the world are as beames of Gods power.

Durand. 2. Sen.
dist. 1. quest. 5.

Hermes. in
Crat.

A prince may imitate God in communicatinge to his subts some parcells of ma^y yet alwaies reserving superiority to himself soe that what is done in his State, doth ever depend vpon himself.

Charles the 6th of France wronged the ma^{ty} of ffrance, when he suffered Sigismund the Emp: to creat a knight of his a president/ of the Court at Paria.

Bodin. de rep.
lib. 1. cap. 3.

74-

John Navarrus who carried himself as a Count Palatine by the authority of the Pope, when he had created some Notaries and legitimated others in ffrance, was by a decree of the Court at Toulouse condemned of treason.

Such things may be don in anothers iurisdiction but their owne subiects.

And whereas the Emperour Lotharius did sett vp lawes before the gate of St. Peter in the citty of Rome; and did insinuate them as well to Eugenius the Pope, as to the people: that shewes that he had full iurisdiction. for if the

Con. Constit.
feud trus Lothar
in robe.

Natta. cons.
636. n. 17.

Sigon. hist.
ital. 12.

citty of Rome, from whence his is called the Romane Emperour, were not in his power, the Emp. should haue noe power but a vaine title of rule: as ffredericke the 1. answer'd the legates of Pope Adrian.

In a word right to make lawes may be granted soe the lawes be speciall, and not against the generall lawes of the prince that gaue that power.

And also subiects may haue extreame appeales, when they doe iudg accordinge to y^e lawes that they are sworne vnto.

74 verso.
Papinian. lib. 1.
§ 4. ff. ad S.
Turp.

Now he that iudgeth out of the lawe, albeit/ he haue the question of fact in his power, yet the punishment pteynes to the authority of the law: and soe to ma^y wth is the maker of the lawe, soe that it is all one, as if he were denyed to haue appeale from the voice of the lawe; & soe from ma^{ty}.

Thus wee haue determined how farr the rights of ma^y may be acquired of subiects either by concession or by prescription.

Nowe we will come to handle the rights of ma^y in specie.

Cap: 3^m.

Of power of makeing Lawes & of other rights
that issue therefrom.

The most generall right of ma^y is the power of making lawes, in w^{ch} consists the highest degree of meer Rule as sayth Bartolus.

ffor by lawes the wicked are punished, the good are re-

warded. Law is the Comon rule that prescribes every one their duty: the rule of things to be done, or omitted: the rule of things iust and vniust; and the Queen of all diuine & humane things.

Now this vpholdinge of the frame of the Comon wealth, must needs be put into his/ hands vnto whom the State and the guidance thereof is giuen, & committed. but the State is put into the hand of ma^{ty} w^{ch} is plaine out of the definition of a comon wealth, w^{ch} is *Respublica est ordo in quo Maiestas dominatur subditis*.

He then that hath rule put into his hands, must also haue the instruments of ruling in his power, w^{ch} are lawes and decrees of a superiour.

ffor lawe properly is that w^{ch} establisheth what it will either by commandinge or by forbiddinge.

L. 1. 2. & 7.
ff. de ll.

And it is not soe much reason imbred in nature as Tully thinkes, that is the fountaine of lawes: as it is power to compell obedience, w^{ch} they must haue from Ma^{ty}. otherwise lawes would be but like spiders webbs, w^{ch} greater flies would breake thorough. every fearfull hare can say I prescribe equity to all, but lyons would but laugh at rules of right, if superiour power doe not compell them to obey. Silla being cited of Cinna, scornes his weake consulshipe, and disdaines to obey. Herod being cited of the 70 elders to answer in the synedrion, for executing certaine robbers wthout their command & warrant, did not only appear wth an armed guard, but guirded himself wth his golden sword to let them knowe, that if they decreed anythinge/ hardly against him, he was ready to take revenge. A good man

Cicer. 1. de
legib.

Plat. Sill.

75 veru.

is indeed a law to himself, and would not doe wronge though he might doe it, wth gaine and wthout danger. but it is not soe wth ill men who must be kept in wth fear of punishment. Therefore Seneca sayth truly, that multo Latius patet officiorum, quam legum ratio. And Aristotle observes well, that one and the same man may be vir malus et civis bonus.

✓ Right and power of law makeinge must be in Maiestie and supreme power: or must be confirmed by Ma^{ty}, as Solons lawes were by the State of Athens, and the lawes of the Decemviri by the people of Rome for in both these States, Ma^{ty} resided then in the people though vnder their Kings Ma^{ty} was in their Kings; and after their expulsion in the Senate and the people. for though the Senate might make decrees yet the tribunes of the people did approue and confirme them; or else they were of noe validity against the people.

Valer. Max.
lib. 2. c. 2.

76.

Polib. lib. 6.

Valerius Max: writes, that though the Tribunes of the people might not enter vp into y^e Senate howse yett they sate in their seates at the partition dores of the Court, and did wth most attentiu eare examine the decrees of the Senators: so that if they did dislike/any thing in them they would not suffer y^em to passe. And Erg: the letter T, was wont to be prescribed vnder all antient decrees of the Senate, by w^{ch} note they signified that the Tribunes did approue and ratifie them. And if but any one of the Tribunes of the people did dislike, the Senat could decree nothinge.

But when the rule of the Empire was translated to one

prince, the Emperour: then at his pleasure the decrees of the Senate, either obteyned or lost their force. vntill by Leo's Lawe all power of making lawe was wholly taken away from the Senate, & left to the Emp: who had sole power both of making and alsoe of interpreting all lawes.

ffor Ma^{ty} must ever haue supream power: but noe greater power can ther be, then to giue lawes to all, and by their prescription to governe the actions of the subiects.

To them alsoe apperteynes the power of abrogatinge of lawes quia eadem est potentia oppositorum, and in this sense they rule, non solum secundum leges, sed et ipsis Legibus.

Now there is a three fold right } 1. Divine.
2. Naturall.
3. Positive or Civill.

Now lett vs examine what power Ma^{ty} hath in every one of these.

By divine Lawe wee doe not meane, Leges forenses Judæorum. but these eternall p^rcepts/ partly engraven on the mindes of men in their first creation, partly revealed in holy Scripture; w^{ch} doe conteyne the right way of liveing well & godly; not variable at any tyme or place.

By naturall right we vnderstand these precepts ingrafted in nature w^{ch} doe co^mmand what should be done, and forbidd the contrary.

ffor this rule of right and iustice, is not what this or that man thinks, but it is a comon notion and intelligence engraven in our mindes, by w^{ch} wee cann make a difference

Arist. Eth. 5.
10.

Cicer. de
Legib. 1.

re ppukōv.

between things honest & dishonest, and between vertue and vice. And it is madnesse to thinke that this consists in opinion and not in nature.

Positive right is that w^{ch} is placed in the will of the prince and is of validity after it is decreed; though before it was not; as that a p^{ow}nd is enough for the redemption of a Captive; or 40 yeares make p^{re}scription.

Now for ius divinum, noe Pope or prince can alter it, or take away. for it is iniury to god to presume to abrogate his lawe, yea it is treason against god; and if a subiect should doe it against his Soueraigne, it were vn-sufferable; much more if man ag^t god.

Tirag. de remit.
penis in prefat.
n. 45^o

77.

Abb. in l. non
est de voto.

Shall wee then allow the adulation of the Popes Parasites w^{ch} mainteyne that y^e Pope/ may dispense in all things save the Articles of the faith; for he cannot giue any a dispensacōn to belecue in another false god; or to deny Christ to be his Saviour, or to doubt of the holy Ghost &c. but he may dispense wth incest periury &c. and that by him whosoever is freed from the divine lawes, is safely provided for against god.

Lancelot. lib. 1.
cap. 1. § 4.
felm. in cap.
que in eccles.
Col. 7. de const.
gen. 2.

Lancelot. lib. 2.
cap. 1. § 4.
vera. 3. col-
lectis n. 12.
Michael Ricc.
in fin. hist.
Hung.

God commanding that in mariage there should be two in one flesh. yet the Pope dispenseth that one may haue *mes* wives.

The Scripture sayth whom god hath ioyn'd lett noe man putt asunder; yet the Popes takes vpon them to doe contrary: as Alex: the 6th gaue Vladislaus Kinge of Hungary power to put away his wife Beatrix &c soe that Luther said not wthout cause; y^e Popes sell mariages as marchants sell wares. The Pope doth also dispenc in degrees

prehibited, absolves from oathes, & tosses gods lawe as he likes himselfe.

They that giue Ma^{ty} power to limitt gods lawes, doe it ever wth this reservacō: si causa satis probabilis id exigat. but Pope Gregory the 9th. doth presuppose that Contra jus divinum nulla causa probabilis sufficit.

Gratian, Sota
& alii.

ffor he that will correct the lawes of another doth either accuse the lawes of iniquitie, or else makes himself wiser to know that wth he knew not./

Gregor. in l.
cum turto de
consuetud.

But they will say the Pope may, declarare ius divinum, sed non de eo dispensare. 77 ~~vera~~.

To declare is nothing else, but to interprett the true meaninge of the law, and to iudge of y^t fact in hand, whether it be conteyned sub communi iure.

As if one haue made a vowe, the Pope declares it is to be vnderstood, if he cann, or may pforme it.

But to dispense is to exempt from the obedience of the lawe, the obligation of the law still standinge in force. It is then a sinn ag^t gods lawe to exempt malefactors by the priviledges of churches or churchmen from the due punishment of lawes enioyned by god.

Tho. 22. 9. 22.
art. 10.

As among the heathen Romans, if any man goeing to execution, should chance to meet a vestall virgine, he was instantly sett free, soe now at Rome, these that are condemned to dye are freed by the meeting of the Cardinalls. The same priviledg had the B B^m of Geneva to free a condemned man, and to fetch him from the place of execution (Le Cittin de Genev:).

Plot. Numa.

Bl. Salu. in l.
eddictis in fine
cap. de App.
Laud in tr. de
card scilicet. &c.

And among the old Romans he should escape a whip-

Gellius, lib. 10.
c. 15.

78.
Jan. ffaylon. in
hist. Norman.

pinge that did fall downe on his knees at the feet of the flamen Dialis. The Cannons of the Church of Roan haue/ a custom that the day before the feast wth they doe keep for this purpose, they doe desire the most notorious malefactor then in p^rson to be giuen vnto them, whom when they haue heard confesse, and admonished to amend they doe wth certaine publicke ceremonies both in the Church, and in a Court of iudgm^t neer adioyninge finely trimmed for that purpose, pronounce innocent and discharged of all punishment.

Char. Sigon.
lib. 17. hist.
Ital.

In the same error was the monke John Vicerinus, who haueing tyed to himself the mindes of the vulgar people, wth an opinion of Religion, suffered and allowed them to break open the prisons, & let out all them that lay in for debt in despite of the magistrate.

2 Sam. xix.

As doe diuers princes also at their Coronation. Indeed if princes did only pardon offences don against their owne persons, as David did Shemei and others; it carries a shew of clemency. but when it is either against reasons of State or against gods lawe, wee may not imagine, that such vnseasonable Clemency can be acceptable to god for privilege in *præiudicium tertii non subsistet*.

78 *cor.*

Heli may not spare his sonnes nor Saul/ Agag, when god commands to punish.

ffor they execute gods iudgm^t not their owne:

They also wrong the Comon wealth, encouraging sinners by their indulgence & impunity.

And albeit inferiour Magistrates must not digresse from the punishment prescribed by the law, because they are the

ministers of the law; yett Ma^y may in some cases accrimoniam severi juris inflectere, and may remitt punishment prescribed by Lawes meerly positive, w^{ch} he hath power to moderate; but in noe sorte may he doe it, in and against divine lawes; because jus divinum immortale est; w^{ch} holdes also in iure naturali, w^{ch} is also immutable.

Symach. lib. 10.
Ep. 63.

And Erg: St. Lewys when he had pardoned one a wicked fact, and fell by & by vppon the verse of the 106 Psalme; blessed are they that doe iustice; he recald the man and called in his pardon.

Anturioch.
lib. 3. the. 9.

I am pswaded by these places that a Kinge ought not to pardon murther: Numb. 35. 33. 31. Exod: 21. 12. Deut. 19. 10. 13. 1 King: 2. 31. 33. vnlesse he could alter gods lawe or annihilate it, w^{ch} he doth if he goe about to change the vnchangeable rule of righteousness.

The lawiers Cavill will not serve y^t when he punishes a murtherer by the purse, pecunia/ est quasi sanguis hominis: god will not be played wthall.

Alex. in. l. 1.
9^a. quisq. viz.
79.

Againe si mulctæ irrogari debent secundum diversitatem census; an hundred thousand crownes were nothinge to him that is worth many hundred thousands.

But Gods lawe requires punishm^t, in Arithmetica proportion, Ita nunquam iudicabis et parvum; neither shall thou have respect of persons.

I approve not the vnreasonable custome of Italians, that hold that a Banditto may be lawfully killed of any one, sith it is said to every private man thou shalt not kill.

Nor can I but condemne that law of the Massilians w^{ch} had layd vp in a readines poyson to haue giuen to him, w^{ch}

Valer. Max.
lib. 2.

could yeild their Senate a reason why he was willing to leaue this life.

Thegan. in vit.
Lud.
Sigon. lib. 9.
hist. Ital.

These dispensations are wicked, as also these that gaue power to the sonnes to rehell against their fathers, or to kill them, as did y^e B.B^{re} of ffrance that armed the sonnes of Ludovicus pius against the father: or that of Pope Vrban that enioyned Conrade the sonne to warr against the father, or Hen. the 4th against Hen: his father, as did the Popes B.B^{re}./

Aventin. lib. 5.

79 ~~over~~.

ffurther they that hold that a Banditto may be killed of any doe not allow the sonn to doe it against his father.

Plut. Sulla.

And Plutarch doth iustly condemne Sillas proscription for Tyrannicall, that phibited parents and children to giue lodging to the proscribed, but commanded servant to kill his master father his sonne.

Hector. Boet.
in hist. Scot.
Polidor. lib. 10.

Such an abominable law also was that of the Scotts, w^{ch} allowed every lord of a manor to lye wth every bride in his manor before she was married. w^{ch} Malcom the 3^d abrogated, yet left the mayd to redeem her virginitye, wth halfe a marke of gold, or a crowne of gould.

Neither cann a prince abrogate or take away the law of nature by any lawe that he cann make.

ffor as reason is the same wth all nations soe also is the law of nature: w^{ch} is a light of divine truth, left in mens mindes since the fall, by w^{ch} they can make a difference between things honest and dishonest. & this is vnchangable. Noe prince cann free vs from it, or any part of it, nor quallifie it by interpretation: It is the same at Rome, and at Athens, heertofoe, now & hereafter./

It is the Canon *jus* of all nations & of all tymes: he that will resist this must runn out of himself; and despise nature. for it is nothinge else but right reason, and the foundation of all vertues. Erg: whatsoever is done against it, is vitious and against right reason. & what is such can never be defended. 80. ✓

All lawes made against this lawe of nature, are vniust, as that the Dictator might wthout punishment kill any one, wthout rendringe a reason. Cicer. 1 leg. ✓

It was an vniust act of Tiberius, who caused to be condemned Asinius Gallus the same day and tyme he was his guest, and that in the Senate, beinge absent. Dion. lib. 58.

Soe also the lawe of William the first Kinge of Sicilie, was vniust and against the law of nature; Ne fas sit patri sine licentia Regis filiam locare, to marry his daughter. Simiont. lib. 2. Hist. Neapol.

As also the custome of England that giues power to the lord to tender a marriage to his ward; and lycence to punish him if he doe not marry whom he offers him:/ Smith. lib. 3. de rep. Angl. ✓
c. 5.

Because saith Plinie in Panegy: *lex et vis naturæ semper in ditione parentum, liberos esse iussit.* & what is in dominio nostro a prince cannot take from vs to himself. 8q. 17m.

ffurther also nothing is so naturall, as y^t those whom law & nature hath made free, should haue their owne free choise, especially in marriage choise, w^{ch} ought alwaies to be free.

Insoemuch that Scipios wife when her husband told her, that he had betrothed his daughter to Tiberius Gracchus answered with indignation, that he ought not wthout the advise of the mother promise his daughter. Plut. Vit. Scipion.

The Emperours Honorius and Theodosius severely punished that party that should procure the princes letters to gett a wif wthout the fathers good likeinge.]

✓ By the same argument Ma^{ty} may not revoke the last will and testam^t of any of his subjects because the liberty of makeinge wills issues from the law of nature and nations.

Hoc enim est dominium facultas disponendi de re sua wth nature allowes to every one over his owne./

81. ✓ And from the foundation wee infer that a prince by the fullnes of his power may not goe against his owne contracts: for albeit God hath subiected lawes to princes & the world, ytt hath he not subiected contracts wth are de iure gentium. for a prince is bound by contract not civilly only, but as the better opinion of doctors is, naturally.

1 Reg. 3. for nothinge is soe naturall as to keep faith and promise,
Numbers xxiii. wth is a stile of god himself: Thou o' god wth keepest thy covenant and mercy. Hath the lord spoken and will not he keep it:

Sueton. August. It is a good prayse that Augustus gaue himself: bonæ fidei sum: wherein princes ought to be like vnto god.

✓ By this that I have said it is apparent that princes haue noe power over Lawes either divine or naturall: either to take them away in whole, or dispence wth them in part, vnlesse in case of some extream necessitye, wth a pviso that noe sinn be committed.

81. ~~cor.~~ Yett a prince may declare them, and wth due weigheinge of the cercumstances apply them to the diversity of facts
Arist. Eth. 3. 2. wth equity, for varietas cercumstantiarum/ variat . . . ius. multa quæ natura videntur honesta esse, temporibus sunt

inhonesta. But as concerninge lawes meerly Civill, and vnder w^{ch} there is noe divine and naturall right, in these now consists the whole power of Ma^{ty}. Cicer. off. 3. ✓

ffarr be it that wee should imagine wth Brutus that it is not lawfull for the King to be more severe or more clement than y^e lawes, as if a Kinge were noe more then a magistrate or a iudg. ✓

The Dictator amongst the Romans, that had nothinge but præcariam monarchiam, yett had power to pardon or to condemne, shall wee then giue lesse power to a Kinge, then to a Dictator. or shall wee binde him as the stoickes doe god wth fatall decrees soe wee the Kinge with bonds of lawes y^e like Jupiter in Homer he cann afford his sonn Sarpedon noe remedy but teares: that he cann only say: Dura quidem Lex est, sed ita Scripta. Liv. lib. 2. ✓

Why is a King then stiled Dominus Legum, if he be noe more then a minister of them. ✓ \

Why is he stiled lex animata, fons Justitiæ, Conditor Legum, if he be noe/ lesse subiect vnto lawes then iudges & officers of Justice? and if Appollonius Thyaneus sayd true to Domitian, Leges si tibi imperare non putaveris ipse non imperabis: all that we haue heard touching his absolute power doth fall; or else he that makes lawes may also abrogate them. 82. ✓
Philoth. lib. 2.

But yett in abrogatinge lawes, he must pceed wth good conscience, for the evident vtility of the Comon wealth, but if he doe vse fraud in his calling in lawes, his sinn is much greater. or calumnie w^{ch} Tully speakes of, is a crafty & malicious interpretation of lawes for his owne advantage: ✓ ✓

Cicer. off. 1. as he that haueing made truce for 30 dayes, setts vpon his enemies in the night, quod dierum essent pacta non noctium induciæ.

Jovius. lib. 33. [Soe Solyman caused Haybraym y^e Bashaw to be killed as he lay fast a sleep, when as he had sworne that he would neuer take life from him, as long as he liued, being taught by Talisman his priest, Dormientem inter vivos non censerì.

Dion. lib. 47. Soe the Trium-viri when they were phibited by lawe to punish (impubem) one vnder age they first gaue him Togam virilem a/ mans gowne, before the just tyme he should haue had it, & then executed the law ag^t him.

82 versa.

A prince in abrogating & execution of lawes must haue a iust cause to doe it, & must vse noe cavill or cover.

Yett may we not hold that a Kinge in his Kingdome hath noe power to command any new thinge.

In the same sorte also, a prince hath power not only to pardon and to abolish the punishment of a crime committed against lawe, but also to restore to goods blood honor and to the former estate.

1 Reg. 2.

Soe Solomon gave Abiather his life. A iudg may not alter his sentence a prince may: because a iudg is but the mouth & hand of the lawe: A prince hath supream power, and is vmpire and lord of his owne actions, to alter them vpon good occasion of state: and to mitigate and change lawes, w^{ch} are but Mortuæ imperatorum voces.

He may therefore dispose of lawes in many things as he sees good, and may giue ætatis veniam, and allow one capable of office that is vnder age by lawe./

83.

Soe Scipio standinge for the Consulshipe being vnder age

of 24 yeares, vnder w^{ch} tyme none might by law be consull; made answeare to this barr, that he had yeares enough, if it pleased the State of Rome to thinke soe.

Soe adoption not lawfully made may be confirmed of the prince.

Soe may he giue precedence to women that marry a second husband lesse noble, to keep the place of their former more noble husband, w^{ch} lycence the Emp. Antoninus gaue to Julia Mammea his Cosin German.

L. nupta vlt.
ff. de Senat.

In this sort Ambrose, Nicholas & Severus had lycence to be Cosin B.B^{re} before they were made preista.

Clap. lib. 1.
c. 12.

Innumerable other privilegedes haue absolute princea.

Now a privileged is a grant made to a privat person for his punishm^t or profit & that besides the Comon and ordinary right & lawe.

It is called privilegium, quia in privatos feratur, & quia sit quasi lex privata. [Gellius derives it out of the word privus q^d. antiqui pro singulis dixerunt.

Isidor. lib. 5.
c. 18. etymolog.
Gellius. lib. 10.
c. 20.

Privilegium est Lex, de privata Lata qua iure communi derogatur./

Cicero,

A minister of the law, hath noe power over law, or against lawe, as hath a Prince.

83 *over*

A prince also may by his royall authoritie make men noble, & giue them great privilegedes.

{ 1 at home only in his owne
country by creation or office.

There is a twofold nobility

{ 2 abroad by vertue, worth
& progeny also.

Liv. lib. 3.

Tacit. hist.
lib. 3.The first is called *domi nobilis, nobilis apud tuos.*The second, *Domi simul et militiæ clarus.*

A prince may make noble in his owne State but not abroad.

Hester Chap. vi. Thus shall the man be honored whom the Kinge will honor. soe may he also legitimate at home.

By nature wee are all alike Noble, Descended all of one Comon parent. soe that by nature none is base: that comes only by vice and badd manners.

The. Walsing-
ham. Stowe.
&c.This made Jack Cade tell his fellow Trait^{rs}. that had conspired to root out nobility, y^e Gentry was an iniury to nature, & all inequallity of dignities.Ergo sith *Nemo præsumitur nobilis*, he that allleges nobility must prove it, sayth the Civill law that it is from patent of his prince, who only may give nobility, legitimation, pardon, priviledge &c., & licence to keep faires & marketts &c./

84.

Caput 4^{thum}

Of the power of making Magistrates, & of last appeale, proper to Maiesty.

These two are proper to Ma^{ty} to

{	1 creat officers
	&
{	2 to haue right of last appeale.

To creat a magistrate is not to chose or to name him, but to giue him force, power, iurisdiction, and authority, in w^{ch} consists the essence of his office.ffor the inter-rex did vse to name the Dictato^r: the Car-

dinalls doe elect the Pope; but they cannot wth all giue him absolute power wth themselves haue not.

But Ma^y soe choseth, that it doth giue power also from it self, as possessinge it self supream iurisdiction.

Soe that power and authority granted to Magistrates, hath his root in Ma^y, w^{ch} is the true possessor of it.

f^{or} Ma^y for his owne ease comitts care of inferiour things to vnder officers, reserueing to it self supream power of appeales. f^{or} that is essentiall to Ma^y and cannot from it be seperated & alienated.

Among the royall lawes of Spaine is found this lawe, decreeing that if a Castle be vpon some cause alienated wth all tribute &/ meer command, yett it must be vnderstood that supreme iurisdiction is excepted, and y^t appeales may be made to the prince.

L. 9. Tit. 4.
part 5.

24. 1070.

Romulus granted iudgm^t to the Senate, wth proviso of appeale to himself.

Hallicarnens.
lib. 2.

And whereas Kings haue granted to some Co^{rt} that none shall appeale from them, that grant doth argue not the overthrow of supream power of Ma^y, w^{ch} may make such a grant but wth this caution, modo fiat sine præiudicio tertii.

Soe that he that putts appeall from himself, yet reteynes supream iurisdiction to himself and his successor.

He that grants land to a neighbour prince wthout appeale, resignes to that prince right of Ma^y as Kinge John of France did to King Edward the 3d of England in Aquitaine.

But in magistratés w^{ch} rule in the prince's name,

R

there is not the same reason, when it is to them granted that appeales shall not be made from them, this is to ease the prince, & in it he neuer alienates his owne power, but assignes it to his deputy. Yet this grant wronges the subject, because that lycence makes the iudges more negligent, secure and insolent, as feareing/ noe checke though they doe wronge, whereas appeales from them would make them more carefull to keep wthin the bounds of Justice.

Againe it deprives the wronged of iust defence w^{ch} is due by the law of nature to all, and beares all to the iudges lust &c. Erg: Caligula that admitted not appeale from his officers, yet allowed supplication and petition to be made against them, or else he had not left himself ma^y.

And in England though there be noe appeale from the iudgm^t of 12 men in criminall causes, yet they reserve another remedie w^{ch} is repriving of the partie condemned to declare the matter to the prince to obtaine his pardon, & in civill causes albeit ther be noe appeale from the iudges yett there is allowed writts of errour and supplication to the Chancellor.

Princes must keep in their owne hands supreamie iurisdiction, either by way of appeale or supplication as Mæcenæ counsellèd Augustus.

But from ma^y none can appeale for it hath neither peer nor superiour, but vnto ma^y as one appeales from Philipp of Macedon a sleep to Philip awake: or from him drunke to him sober: or from the Prince ill informed to the Kinge better informed.

Smith. lib. 3.
rep. Ang. cap.
1 & 2.

Dion. lib. 52.

Valer. Max.
lib. 6. cap. 2.

As for appeales from Emperour or Kings/ to the Pope they are idle. And the Popes confesse that from a secular Judge they cannot appeale to them, because a Pope in temporal things, hath but casuall iurisdiction. 85 *vera.*

Againe in the presence of Ma^{tie} all authority of magistrates ceases, for the prince hath fullness of power and iurisdiction, soe that a sword and dagger were in old tyme, insignia Imperatoria, wth noe other officer might sitt girded wthall. in iudgment, nor come into the p^{re}sence of the Emp: wthall. for this cause was Tiridates Kinge of Armenia commanded to putt off his sword when he came to salute Nero.

Dion. lib. 63.

And Augustus sate girded wth his sword in the Senate.

Sueton August. c. 35.

Soe Comodus chosen Emp. received the sword of Julius Cæsar brought him out of Mars his temple.

And hence Clapmarius thinkes came the custome of delivering vp of kingdomes by a sword.

Liber. de arcan. c. 17.

The Capteyne of the Emp: guard vseth alway to receive his authority wth a sword giuen him of the Emperour.

Soe Traian giueing the sword to the capteyne/ of this guard vsed that excellent speach accipe gladium, quo si iuste imperaui, pro me: si iniuste contra me vtere:

86.
Xiphil & Dion.

That a sword was Imperii nota, it appeares in Tacitus, who writes that Vitellius being to giue power to the Senate, losed his dagger from his side, and gaue it to the Consull that stood by, as a signe of power over the life of Cittizens. And in Galba who when he was chosen Emperour when clothed wth an imperiall Robe, & his dagger hanging vpon his breast from about his necke.

Tacit. hist. lib. 3.

Sueton. Galba. cap. 11.

Now this power of sword is proper to Ma^{ty} but granted

præcario to magistrates, who haue all power from Ma^{ty}, & right of sword, but none from themselves.

This caused Julius Cæsar & Augustus oppressors of their Countreyes liberty to keep to themselves choise of all chiefe officers, referreing the Election in shew to the people, who they commanded to choose such as they named; w^{ch} were named Cæsar's Candidati.

✓ generally all Kings either confirme or transferr all offices, at their coming to the Crowne./

36 vers.

And these that hold offices w^{thout} lawfull calling to them by superiour power; or get them or keep them by force, are Tyrants as were Sylla and Augustus; whom ✓ when the Senate made some stay to elect Consull, being not of age by law for that honor; Cornelius a capteyne that he had sent in Ambassage to the Senate, casting aside his Cassocke, & laying hand vpon the hilt of his sword, stucke not to tell the Senators; Hic faciet, si vos non feceritis.

Sueton. August. cap. 26.

(A prince may not suffer a subiect of his to receive any power in his owne kingdome from a forreigner.

Paris in W. Ruf.

William Rufus prohibited Anselme Archbishop of Canterbury to receive his Pall from Rome, or to acknowledge y^e Popes iurisdiction, for he would haue noe equall to himselfe in his owne kingdome.

✓ Creation of Counts, Marquesses, Dukes &c. is from Emp: & Kings; and soe all their priuiledges.

✓ Soe callinge of assemblies of State, Diotts, Parliaments doe all pteyne to Kings.

Bellarmin. lib. 1.

Bellermine vseth this as an argument, y^t it belongs to

the pope not to the Emper: to call generall Councells: because y^e/ Emperour hath not power over all the B^{ns} of the world, but he is easily answered. for it is one thinge, rogare to intreat, another thinge, cogere to compell men, to come to meetings or Councells. de concil. & eccl. cap. 13. 87.

Lubecke calls all the Hans-townes to assemblies, yet hath it noe power over y^e rest. & 3 cheife Cantons of the Switzers call the rest to Councell, but not by command, but by compact and agreem^t among themselves. Neither Pope nor Emp: cann compell all Bishops to assemble, nor princes or States to receive their decrees.

Assemblies of State, are the conservers of the State, and the foundation of the weale publicke and apperteyne to none to call them, but to such as haue ma^{ty}, and to take them from Ma^{ty} is to pull the sterne & compasse of the comon wealth out of his hand, and to bringe ruine vpon the State. R ✓

Moses by gods covenant, Numb. 10. had this power over the people, to call them by two silver trumpetts made for y^e purpose to all meetings of peace and warr./

And Corath, Datham & Abiram wth their complices 87 vers. were punished for riseing tumultuously, wthout call of the lawfull magistrate; and for refusing to come when they were called.

This right was in David, Solomon, Asa, Josophat, Josias Numbers xvi. Hsekias, &c And in the Empire princes haue power to call Diotts, against the Empérours will, for the safety of the Empire: because the Ma^{ty} of the Empire is not in the Emperour alone, but in the princes also. ✓

It is an excellent mean of preventing Sedition among the Turkes, to suffer noe bells to be among them, to call them together wthall.

Nich. Gillus in
hist. franc.

And when the Townesmen of Mounpelier had by ringing of a bell called the people together, & murdered the Kings officers, the Kinge did take from them that power of haueing a towne bell, & gaue it to the vniversity there.

Caput 5^{um}

Of power of armes & things belonging therevnto./

88. / The third right of Ma^{tie} is Jus armorum w^{ch} who haue it in their power, [the]y haue [the] comon wealth in their power, for this is the strength and stay of all States.

And for this cause Mæcenas counselled Augustus to keep this power in his owne hands: and Augustus followed his advise soe as he lett the Senate dispose of such provinces as were weake and peaceable, and needed not much any power of armes: but the potent provinces that either bordered vpon braue enemyes, or did threaten newe commotions, and soe seemed to show more perill, he kept to himself; & there he layd & excersised his armyes, w^{ch} were still in his owne command.

Dion. lib. 35.

And by this pollicy he seemed to pmitt the Senate, to iniuye the goods of the Empire securely; and to expose himself to all labours & dangers: and the mayn burden seemed to ly vpon him; whereas vnder this pretext, he dispoiled the Senate of all force of armes, left it feeble, and made

himself stronge. transferring to himself the armes souldiers and the whole strength of y^e whole Empire./

The same pollisy vsed Cyrus long before. for they hold the reynes of the State that haue the Command of armes. 28 ~~1072~~
Xenoph. in
Cyro. lib. 7.

And Erg: Emp: ever reserved to themselves Armandias, that is, the publicke making and keepinge of armes, and y^e armories as one of their regallities, for private men might neither make nor keep armes.

The Emperours had 19 places in w^{ch} armes were made; vizt. 8 in ffrance; 6 in Illyricum, 5 in Italy: w^{ch} were made Scholæ Militiæ.

Neither is it the property of Tyrants only to prohibite their subiects the vse & keepinge of armes, but of good princes also. & to keep in their owne hands power by w^{ch} they may rule, not only the willing but the vnwillinge alsoe. Arist. polit.
4. 13.

It were absurdly done of a prince, to lett a feirce people haue armes in their owne possession, wth w^{ch} they may hurt him at pleasure.

The Romans vsed to giue peace to none but such as layd downe their armes first: as Cæsar made the ffrench to deliver him hostages & their armour, affore he would receave them into faith & p^{ro}tection. And the Philistines being lords over/ the Hebrewes, would not suffer them to make their swords, lances, armes. Cesar, bell.
gall. lib. 2.

29.
1 Sam. xiii.

And good reason; for he that hath noe power to resist, wilbe content to obey and vnwilling to rebell.

The Sultanes of Egypt would pmitt none of their subiects to meddle wth armes, but only their owne Mamme-luces. Peter Marti.
Leg. babilon.

ffurther, lycencing subiects to beare armes, makes them bould to beginn tumults & stirrs. It is fitt Erg: for the conservaçon of publicke peace, to prohibite subiects to beare armes.

§ hanc. igitur
Novell. 85.

Justinian Emp: made a law, that noe private pson or any other, should either make sell or buy armes.

Plin. lib. 34.
cap. 14.

Soe also Porsenna did expressly prohibite the Romans ne ferro, nisi in agricultura vterentur, insomuch, that they were forbidden to write wth an Iron penn.

Dion. lib. 58.

And much lesse might they were smal daggers, w^{ch} are soe much the more dangerous, by how much more they may be carried more closely. wth such was Cæsar slaine in the Senate; & Ergo they were prohibited to come into the Senate wth them, by the Emperour Tiberius.

89 *verm.*

The Polonians are more afrayd of knives/ then of swords, and Pius 4th & quintus, did prohibite all daggs vnder 8 inches & King James vnder 10.

Valer. Max.
lib. 6. cap. 3^o.

L. Domitus proprætor of Sicilie for the avoydinge of robberies w^{ch} were very Comon, made a decree that noe man should carry any weapon, and when one wth a dart had killed a wilde bore, he caused the same to be crucified. and reason of state & publicke security did excuse this severity.

in § ad pala-
tium de pace
tenenda & eius
violatione §
vlt. novell. 17.
Liv. lib. 3.
Ciccr. pro
Rabir. Tacit.
hist. 1.

And the Doctors doe observe in the Civill Lawe, that it was not lawfull for any one to come into the Pallace of the Emperour wth swords or armes.

Among the Romans armes were kept in publicke places, and giuen out to y^e souldiers, in tyme of vse of them.

Soe in the Tower of London, at Paris in the Arsenale,

at Venice, at Haffna in Denmarke, at Dresdin in Saxonie, &c., are publicke armories.

Among the Turkes by their lawes, the souldiers in an expedition may not were there armes if the enemy be farr off but they are carried after them in Cartes.

Bodin. lib. 4.
de rep. cap. 7.

But amonge the Switzers, they are bound by the law every man to weare swords :

Bodin. lib. 4.

Soe the Parthians seldome putt of their/ swords: yea the Switzers doe not putt of their swords when they milk their kine: they plow in Spaine wth swords about them.

90.
Joseph. antiq.
Jud. lib. 18.
cap. 3.

But all these Cittyes & princes that haue publicke armories and Castles in their owne hands, are not found to be soe obedient to their supreame prince. & this vse of armes and Castles as Cominæus observs, giues occasion in Germany to a great deale of lycence.

Comin. lib. 10.

And Erg: as armes, soe also right of fortieficing Cittyes & of building Castles, belongs to Ma^{ty} and is not to be vsurped of any, but wth leaue from Ma^{ty}.

King Steven of England to winn the love of his subjects, and to haue them side wth himself against Henry y^e 2^d gaue them lycence to build and fortife Castles in their owne territories, but not long after he repented him of his liberallity. when he found that therevpon they grew more obstinate.

W^m. Malmesh.
in novell. hist.

It is also a custome in Italy, & in some other places to disarmen men at their gates, vppon their entrance; and to restore them at their returne, their weapons againe.

Which Custome apperteynes also to Ma^{ty} and seemes to haue had his beginninge from/ the Massilians: who had

Camerar. cont.
1. cap. 47.
90 v^{er}ba.

Justin. lib. 43.

like to haue had their Citty surprised by King Commannus his stratageme ; who vpon a great festivall day, had sent into their towne many stout & brave fellowes, vnder pretence to see their solemnities, and sent in a great many moe covered wth rushes, & bowes in carts : who should haue lett him into the Citty in the night, when the cittyzens that had wearied themselves by danceing and had well drunke should haue been fast a sleep : but a kinswoman of the King's discovered this stratageme to a lover of hers in the Towne, & so the device was prevented.

And surely strangers must not thinke much, to be subject to such lawes in strange Countryes, and to conformance themselves to such customes ; or else to bear the punishment of the law.

But if he be soe remote a stranger y^t cannot well take notice of their custome in this case he is to be pardoned for y^e first offence, sith the law purposeth to punish dolum in delinquente.

91. There followes another pcell of royalty w^{ch} passes all these, w^{ch} is that Cittizens may not vse armes, but at the comānd/ of Ma^{ty} to whom alone it doth pteyne to move armes ; insomuch that it is treason w^{thout} command of ma^{ty} to levy an army or fight. for right of moveing war or makeinge peace is proper to Ma^{ty}.

Surely sith both divine and humane lawes doe restrayne private revenge least men should grow like beasts, and hold them selves to haue more right, because they haue more strength to oppresse the weake, and least also that revenge should exceed the offence done, for anger is ever impotent,

and an vniust iudg in her owne wrongs: much more doe they prohibite private warr, where the sword is not ever an equall decider of the iustnes of the quarrell: neither doth it keep the mean in punishinge, but strikes nocent & innocent, hand over hand wthout any distinction: & houlds what soever is profitable to be lawfull.

Erg: it is Treason for private men to move warr: because that w^{ch} may overthrowe the whole state at one blowe should be in no mans power, but in his, to whom the care of the whole state is committed.

2. It is intollerable wronge to Ma^{ty} when a private man
→ vsurpes to him selfe the right of revenge, & punishing as if he/ had not a superiour, to whom he might flee for redresse
91 vna. /

The Romans reputed it, Latrocinium non bellum, w^{ch} was not proclaimed of y^e State. and they did punish all migistrates that vndertooke warr, wthout command and authority of the State. And sent to demand Anniball to be giuen vp vnto them in pœnam rupti foederis, if wthout comand of y^e State he had taken armes against the Saguntines. Liv. lib. 5.

How fearfull a warr the State of Rome brought vppon
them by not delivering vp to ye ffrench the 3 sonnes of Fabius Ambustus, who beinge Ambassador from the State to y^e ffrench, did against the lawes of armes put himself & his men into armes, & fought against the ffrench for the Clusines, the Romane Historyes testify. Plut. Camill.

All Histories of other States ever witness that noe warr might be vndertaken but wth command of the State.

Simpler. de
Helv. rep.
lib. 1.

In the league of the Switzers it is one clause, that the other Cantones shall not enter into war, wthout the knowledge of the rest.

The Lacedemonians before the[y] would p^rclaime warr ag^t the Athenians, would haue all their allies to approue it wth their voyces that the wars vndertaken by comon decree, might be executed by comon force./

92.
Liv. lib. 5.

And the Hetrurians answered the Veians, y^t sith they asked not their voice in the vndertaking of warr, they should not receive their aide in execution of it.

And albeit there is lesse perill in makeinge peace, then in makeinge warr; soe that magistrates and generalls might treat wth enemyes of peace, & sett downe & p^rmise conditions thereof, yet these treaties were ever to be ratified by Ma^{ty} & therefore what they did was but sponsio: what the State concluded and established was Foedus.

And they held it vnequall, that the State should be bound to stand to the promise of their officers, if they had not their Co^mission to conclude.

L. ignorantis.
49. de procur.

It is a rule in Lawe, y^t Ignorantis domini conditio deterior per procutorem fieri non debet; and he shoves himself a false fellow, that doth any act wthout commission w^{ch} doth require a speciall co^mission. yea moreover, Ma^{ty} is not bound by the Magistrate, as if an officer make peace, the Kinge is not bound to keep it vnlesse he please himself.

Therefore did the Romans deliver vp Sp: Posthumius to the Samnits, wth whom he had made a dishonorable peace & would not be tyed to the peace made by him./

Vetarius also was soe served, & yielded vp to the
 Samnits : Mancinus Hostilicus to the Numantines : Mar :
 Clodius to the Corsi : & when they would not receave
 him, the Senate commanded him to be put to death, in the
 publicke Gaile.

92. *verm.*
Valer. Max.
lib. 6. cap. 1.
Patercul. lib. 2.
Valer. Max.
lib. 6. c. 3.

Sendinge Ambassadors to other States and giueing them
 audience at home; is a pcell of Ma^{ty}.

Augustus for his own ease, made 3 Consulars Comis- *Dion. lib. 55.*
 sioners to hear ambassado^rs yet he reteyned the right of
 Ma^{ty} to himselfe.

The ffrench doe thus distinguish : they y^t are sent from
 an absolute prince acknowledginge noe superiour are called
 ambassadors : others they call agents ; the messengers of
 subiects, they call comissaries or deputez.

Cap : 6^{um}

Of the right that Ma^{ty} hath over the Church & in causes
 ecclesiasticall.

We haue spoken of 3 } 1. makeing lawes. Chap. 3.
 rights of Ma^{ty} viz. of } 2. governing the State. Chap: 4.
 } 3. power of armes. Cha: 5./

W^{ch} are the three cheife rights in w^{ch} consists power of
 Empire issuing out of the very essence of Ma^{ty}. vnto these
 we will add two of great consequence in the State, w^{ch} are
 essentiall to Matie.

The first is establishing and maintaininge Religion
 Chap : 6.

The second is power about money & coyne Chap. 7.

If all high and cheif things in the State, do belonge to Ma^{ty} surely the care of Religion cannot be taken from it sith it is the chiefe of all functions in the State by ye testimony of Aristotle: and as Ambrose sayth : nihil majus religionē, nihil sublimius fide . yea there is nothing doth more freindly conioyne mens mindes nor more strongly knitt together the very ioynts and sinews of the State then Religion.

Arist. pol. 7. 8.
Ambros. ad
valent. imp.
lib. 1. cap. 1.

ffor herein consists the safety of the State that subjects pforme faithfull obedience to their superiours of w^{ch} religion is y^e most effectuall mean. for this is a bridle to keep in the mindes of men from all rebellion, & insolent comotion for he that truly feares god will not be ill, noe not in secrett though he/ might doe ill wthout knowledg of man, or feare of punishment.

93 vers.

Plato. leg.
lib. 10.

Plato would haue this preface laid before all lawe, that there is a god : & that he is iust & good : & his deputy is the magistrate, whom wee must obey for conscience sake for the Lord . if men doe not more reverence vindicem deum, then they fear hominem iudicem, they will not be kept in from insolence, iniury & iniustice.

Take away fayth, truth, conscience of promise, pact of oath, w^{ch} nothings but religion doth establish ; & there will remayne noe truth, noe league, noe life amonge men . yea then, Nemo sibi putabit turpe q^d aliis fuit fructuosum.

Paterent. lib. 2.

Cicer. off. 3.

What other thinge compelled Mar : Attilius Regulus to returne & to put himself into the power of his savage foes, w^{ch} he knew would vse all torture to him, but religion of

his oath, in w^{ch} men call god to be a revenger, if they doe forswear themselves. for he that by an oath deceiues another, doth not so much wronge man as god./

Asdrusball beinge asked by the Senate by w^t godds they would confirme the league, when as they had deceived by those whome they had sworne by before, made this answear ; even by these godds, w^{ch} had soe severely revenged their periury.

Religion being then the Basis, foundation and pillar of the State : w^{ch} taken away all States come to ruine, he must haue the charge of religion to whose care & guidance the sterne of State is committed.

It is vaine to expect health from a Phisitian, whom we will obey but in half of his prescriptions : or to accuse the master of a ship of wrackinge, when the best part of the guidance of the sterne is committed to a stranger, or y^t w^{ch} may overthrow the whole shipp.

What mischeifes haue come vpon divers kingdomes in Europe, vpon the supposall, that the Pope hath cheife power over religion in all States.

Pipin that had rebelliously put downe his lawfull prince did cloake his treason wth the Popes authority.

The Pope absolved Henry the 3^d of England/ from his oath, when he had sworne any thinge to his Barones w^{ch} he would not pforme.

Gregory the 7th Pope qui primus imperium Pontificium condidit sayth Auentine, exercised this Tyranny against Henry 3^d Emperour, to absolve his subiects from their oath of allegiance & pronounce him noe kinge &c.

94.
Liv. lib. 3.

Aimon. lib. 4.
c. 61.

94. ~~vera~~
Fabian. Westm.
in H. 3.

Auentin ann.
Boior. lib. 5.

Sigon. lib. 9.
hist. Ital.

Adolph.
Sculken.
Apolog. pro
Bellar.

The like did divers other popes against divers other princes. Sculkenius, or Bellermin vnder that name, reckons vpp 28 popes who haue spoiled Emp: Kings & Princes, of their honor, and mainteynes it to be lawfull.

What danger this doctrine brings to Kings what mischiefe to kingdomes, who knowes not that haue read their Histories?

✓ If after the example of Charles the great Otho the 1st and all other wise Kings these princes had kept their right in Ecclesiasticall things, they, nor their kingdomes had never fallen into such misery. wise princes haue ever contemned the popes iurisdictions. Edw: the 3^d of Eng: sent preists out of England to say masses to them of
95. ffanders when the/ Pope had interdicted them from falling from the ffrench Kinge, soe litle did that brave prince care for the pope.

Volater. lib. 4.
geograph.

In like manner did the Venetians of late excoṃmunicated of Pope Paule y^e fift keep their preists and frequented their churches, notwth standing the Popes curse: showing that they were now growen more couragious then were their ancestors, who suffered ffancis Dandalus to lye like a dogg vnder the table of pope Clement, wth a chaine about his necke to pacifie the Pope, that they might be freed from their excommunication.

And albeit the Church hath power to excoṃmunicate, in wth consists the sinews of Ecclesiasticall discipline, soe that Theodosius & other godly Emperours did very nobly submit themselves to that great censure: yett this care pteynes to princes, that they provide, that the church and

service of god be not contemned, but both mainteyned vnder them, as becomes foster fathers of the people of god. & to see, that as the church vnder them shall loose none of hir rights, soe shall she vsurp noe more then owne; nor convert her spirituall/ censure over mens soules, into a temporall Sovereignty over mens bodies, goods & states. Let Pope Hildebrand called Gregory the 7th alleadge in his Epistles, Theodosius, Arcadius, Philipp; Anastatius Emperours excoṁmunicated of Ambrose, Innocent, Constantine, & Anastatius Bishops; but he shall never finde that thereby their kingdomes were taken from them their subjects freed from their obedience, or armed against their princes.

95 *over.* ✓

Ambrose only by his excommunication kept Theodosius out of the church; & some thinke that he did not soe much, but the Emp: abstained of his owne accord.

Zonaras in
Theodos.
Ruffin. lib. 2.
c. 18.

But Hildebrand (whose pernicious example is now made a presedent) would not pardon the Emp: Hen: when he did desire it, vnlesse he would first resigne his Crowne & Empire into his hands & comitt himself thus vnempereured vnto his mercy. How much did the antichristian arrogancy differ from the holy practise, and precepts of Christ & his apostles, who did not only not exempt themselves from the obedience of heathen Tyrants, but also paid them Tribute and comanded all others to obey them.

Wacemund.
ab Eremberg.
cap. 2 de subsid
regni. a. 35.

Math. xx.
Rom. xiii.

But now vnder Antichrists Tyranny, if any/ prince offend the Pope, he will both excommunicate him, and also giue away his Kingdome, though he be neither Hereticke nor Tyrant. Soe farr doe they exceed all bounds of

96. ✓

ecclesiasticall iurisdiction in excommunication, w^{ch} is a censure against the soule of sinners, but not a temporall power, that can absolve subiects from their oathes & soe be the author of periury; or put princes out of their thrones, and soe be an actor of rebellion. verely they are leawd impostures, w^{ch} turne that w^{ch} is spoken of remission of sinnes (whatsoever thou shalt loose or binde in earth shalbe loosed or bound in heauen) to the overturning of States; by takeing of businesses from the ecclesiasticall to a temporall Court; as if the same sinnes that put a man out of the Church, put him also out of his State and kingdome; or as though he that is noe member of the Church could be noe member of the Comon wealth, when as Church and Comon wealth are two distinct States, neither cann one leape from one to another wthout great confusion.

Excommunication is a spirituall remedy, and doth noe more deprive a prince, of the right and gouernment of his kingdome, then it doth a private pson of his land: for the end of/ it is to gaine erring brethren, & to deliver y^e sinner to Sathan for the destruction of y^e flesh, that the spirit may be saved: not that kingdomes may be taken from princes, as Emp: ffrederick the 2^d tells Pope Innocentius.

ffor albeit all spirituall Censures of sinn belonge to the Church, yet every sinn doth not bringe wth it losse of temporall states; neither was Salomon put out of his kingdome for Idolatry.

And Daniell affirmes, that the god of heauen gaue Nabuchodonoser kingdomes, strength rule, & glory & to be King of Kings.

96 verum.
Math. xviii.
1 Corinth. v.
1 Tim. i. & v.
Naucler. gener.
42.

Daniel ii.

Yett Pope Vrban tooke the kingdome from Peter of Castile, because he was accused of vnbeleife. Pope Gregory the 7th excommunicated Henry the Emp: because he had comitted Adultery, sould ecclesiasticall benefices. And Pope Innocent, Fredericke the 2^d because he broake peace between the Empire and the Church, unfefed some Cardinalls made peace wth the Saracens &c.

ffroisard. lib. 1.
c. 23.

Pope John the 22^d depriued Lewys of the Empire, because he had suffered himself to be created Emp: wthout his privitie; & for that he did denye the Emperour to be subject to the Pope.

How dissonant is the doctrine from gods word, Saule was litle lesse then a Tyrant/ that made his kingdome a Tyranny, for he forsooke god layd violent hands vpon his prophetts, & killed his Preists. et multa Tirrannico deliquit, saith Ciprian; yet neither Samuell tooke his kingdome from him, nor absolved his subiects from there obedience; nay moreover least he should haue giuen his subiects occasion of rebellion, he did doe him honor before the elders of the people.

97.

Cyprian. lib. 3.
cp. 11.

And David though he were anynted Kinge by gods owne commandement, yet would he not touch the lords anynted; et dum tenuit oleum, servavit inimicum saith Optatus, teaching vs to reverence our Rulers, that wee should make conscience to touch the skirt of his garm^t by dispraise or detraction, sayth Beda.

1 Sam. xv.

Optat. lib. 2.
advern. parmen.

Beda. lib. 4.
expos. in Sam.

Neither did Nathan depose David for his adultery & murther, nor Ahia Solomon for his Idolatry.

Neither did god ever comand Israells subiects to putt out their ill Kings, for their ill liues.

Math. xvii. 22.

But Christ doth further pronounce Tiberius his kingdome to be sacred, when he paid him tribute.

1 Peter ii.

97 *verse*.

Peeter commands subiects to yeild obedience to their superiours propter Deum, but w^t superiours doth he meane? the governors/ and magistrates of Pontus, Bythinia, and Capadocia, that had gott & did keep the Countrey by force of armes, enemies to Christian Religion, and S^t Paul would not giue ill languag to Ananias, of whom he was vniustly misvsed. neither did any of the holy fathers, & doctors wthdrawe themselves or others, from ye obedience of Constantius, Valens, Julian.

Athanas. in
Epist. serap. &
solet vibam
agent.

Athanasius forbidd his letters to be kept, in w^{ch} he had inserted the Parricide, heresy, piury and other vices of Constantius y^e Emperour.

Ruffin. lib. 2.
c. 15 & 16.

Ambrose never thought of this way of excommunication against the p^rsecuting Arrians: but sayth Potero dolere, Potero flere, potero gemere; aliter nec debeo nec possum resistere.

Carim. &
Pencer. lib. 4.
chron.

98.

Rudolph of Swedia, to whom Pope Gregory gaue his masters Imperiall Crowne, did by a markeable iudgment of god, lose his right hand in battle ag^t the Emp: Henry. And when his right hand soe cutt off was brought vnto him vpon his death bead, he is recorded to haue said thus, to the Bishops that stood by him: this is that hand w^{ch} w^{ch} I confirmed my faith giuen to the Emp: this is a wittnesse of my faith broken by y^r pswasion/ and an argum^t of y^e notorious pfidiousnes of w^{ch} y^e must one day giue an accompt to god.

It is not either Pope or Emp: that can dispence wth the

lawe, either of nature or of god. They haue noe iurisdiction or power over either ; Nothinge is more naturall then for Children to obey their parents, subiects their soveraigne, though both should be ill, for their ill makes them not cease to be vnder parents or princes. Neither doth it follow, that because the[y] sinn against god wee may sinn against them.

Esau had fallen from gods grace, and had sold his birth-right yet Jacob did not therefore forbear to afford him all respects & duties pteyninge to the prince of his howse, as the elder brother ; Ergo doth he bow before him call him lord. &c.

Genes. xxxiii.
4. 8.

It is too Papall a dispensation, w^{ch} takes away piety towards parents, obedience to the prince, and religion towards god ; as doth the popes dispensinge wth subiects, to assoile them from their allegiance. ✓

Neither cann I see any reason why Popes may absolve men from their oathes, more then other men. ✓

If they speake of absolution from sinne,/ we doe wth 98 wth them acknowledge that it doth pteyne to the Church.

But the question is heer of such an absolucōn w^{ch} makes piury noe sinne, oath noe oath, subiects noe subiects.

This is done 2 wayes either { declarando
or
dispensando

for if the lawfull oath doe stand in force, & yett the bond of conscience of it be taken away, w^{ch} the Pope doth when he frees from the oath of Alegiance, for the punism^t

of the prince: then is this dispensation giuen against the religion of the oath and soe against gods owne commandem^t wth none cann free any from, vnlesse he take vpon him to haue supream power over god. neither cann any punish sinn wth sinn, or steale from a theife, robb a robber, or punish adultery by comitting adultery wth his wife.

This were to recall that abominable Roman law to prostitute adulteresses, & to cause a bell to be rongg as oft as any went in vnto them.

99. Punishment must always be iust, lest the remedy become worse then the disease, we must not cast out Sathan with Sathan./ Things ill in their owne nature cannot be made good wth a good intention or meaninge.

✓ Such dispensinge is Ergo sinfull.

The second manner of absolveing from an oath is by declaration, that shoves the lawfullnesse or vnlawfullness, the validity or nullity of an oath, not by takeinge away the bond or conscience, but by sheweing the meaning of an oath giuen.

C. cum quidam
§ Illi vero de
iur.

Soe ministers in absolveing, declare one to be absolved.

Lucius the 3^d absolved these from keeping their oath, wth had sworne not to speake to father, mother, brother or sister, or to afford them any duties or respects: for this was vnlawfull and contrary to nature.

Tacit. ann.

Tiberius gave leaue to a knight of Rome to putt away his wife taken in adultery wth his sonn in law, albeit he had solemnly sworne vnto her, that he would never put her away for this should have bene vnderstood, vnlesse

vpon good & sufficient cause. In this sense a Pope cann noe more release an oath, then cann a Prince, or other Preist. soe Severus & Antoninus declared, that an oath taken against law,/ was of noe force, for noe subject by private oath cann preiudicate the publicke authority. 99 *swa.* ✓

In every oath there must an exception of superiour power be vnderstood : as he that sweares to keep the lawe, is not bound if the prince change the lawes ; nor he that sweares to an inferiour officer, if y^t officer be put out of his place.

When Wenceslaus did against his oath, spend and sell the rights, Citties and provinces of y^e Empire, the electors that did depose him, did also absolve the subjects from their oath ; because by the grant of the Aurea Bulla the ma^y of the Empire was fallen into their hands. *in abdicat Wencesl. apud Vrtist. tom. 2. hist.*

But an oath is a spirituall thinge, & ergo belongs to the Church.

All things that in some sort are called spirituall doe not belonge to ecclesiasticall Corta.

Princes haue authority of establishing lawes of ecclesiasticall discipline, of w^{ch} Charles the great made an edict ; & to prohibite oathes to be taken, and to see executed what is lawfully sworne . & againe in Civill Courts, they doe not soe much question the religion bond & validitie of an oath, as the matter & fact of it. And Civill magistrates may punish/ Idolatry, Blasphemy, periury, abuse of gods service &c. 100. /

David made Psalmes, appointed singers, ordered the Levites &c. *2 Chron. xxiii. 24. 25.*

1 Reg. ii.

Salomon deposed Abiather the Preist and put Zadocke into his place.

2 Reg. xxii. 23.
2 Chron. xxxiv.
35.

Josias read the booke of the law before all the people, comãdanded the preists to purge the Temple, made a pass-over to the lord constituted priests in their offices &c

2 Chron. xxix.
30 & xvii. 19.

The like did Hezekias, Jehosophat & others.

The Kinge of Ninive pclaimed a fast.

Nabachodonosor made a decree against Blaspheminge Daniells God.

A prince must haue the booke of god by him & must meditate in it day & night. Deut. xvii. Jos. i.

Isaiah xlix.
Isaiah lx.

It perteynes to his place to medle in matters of religion, not for decidinge of controversies by his owne authoritie but to put in execution gods service. He is a foster father of y^e Church, constituted to build the walls thereof. He must be a defence of gods Church ag^t foes wthout & wthin it.

100 vers. ✓

To omitt other rights of Ma^{ty} over the Church, wee know that the popes were not ordeyned wthout the knowledg and consent of y^e Emp:/ of Constantinople as the examples of Pope Agatho & Vitallian prove.

Platin. in
Pelag. 2.

Pope Pelagius the 2^d sent to excuse himself to Mauritius the Emp: for that he had not desired his confirmation, being letted by y^e beseiging of the Lumbards. for the Election of the Clergie was nothing at that tyme wthout the Emp: ratifyinge of their election, sayth Platina.

The like right both Charles the great & Otto re-teyned to themselves. The former by the consent of Pope Adrian the Second wth the likeing of Pope Leo, both

yeilding and declaring their right, to ratifie the Popes Election, and to reforme the Apostolicall Sea.

Princes also had the right of conferring ecclesiasticall benefices in their Kingdomes, w^{ch} the Popes, since Hildebrand haue vsurped: as also of election of Bishops; w^{ch} pteynes to him, w^{ch} is the head of the politicke body, and vpon whom lyes the charge of lookeing to religion in his owne dominions. ✓

If buildinge, endoweing, & foundinge of churches giue right to private men to be Patrones of them, as it is in the old verse, Patronum faciunt, dos, / ædificatio, fundus, 101. why should not the Prince w^{ch} is the publicke benefactour of Churches, & preserves & confirms their rights & maintenance by his authority, haue the right of investiture of Bishops: and not to receaue from forreigne power such p'sons into the hart of his estate, as beinge enemies, may vndoe both him and it.

And of whom I pray y^a, doe Bishops hould their temporallities, but of their temporall Lords.

And what mischeife a seditious clergy may doe for the Pope against their Kinge, it appeares by the practise of one Frier of Vincentia who did by his seditious sermons more alienate the mindes of the Lombards from Fredericke the Second, then all the Emperours forces could doe to keep them in their allegiance.

Sigon. lib. 17.
hist. Ital.

And is not then the Kingdome in more safety, when they B B^{rs} doe see the danger of it, and their soſaigne to be their owne, then when they sitt as psons exempt, who haue noe share in the hurt of the State.

U

✓ There is also a 3^d Royalty parcell of y^e princes prerogative w^{ch} is calling of Synodes, & giueinge strength to their Cannons.

101 *verm.* ffor wheresoeuer any danger may be by heresy or faction, there it is meet principem non/ interesse solum sed praesse. yea princes must not only be assistant in the assembles, ✓ but also must vse their power to weed out heresies, stay factions, correct & punish corrupt manners, and to pforme all other things w^{ch} require the p^sence and authority of princes.

Theodos. epist.
ad Grit.

Muneris Cæsarei est sayth Theodosius, to provide that his subiects doe liue, not only pacifice, sed pie, and for that end per potestatem suam munire ecclesiasticam disciplinam. w^{ch} if prelates should neglect, their prince must see it done, ✓ as Kinge Joas seing a want in the preists, did himself vndertake to redresse the abuse for the repairing of the Temple.

Halicarn. lib. 2.
Lamprid. in
Alex.
Tacit. ann. 5.

✓ My meaninge is not, that the Prince hath authority of himself, w^{thout} y^e advise of his divines, to alter or establish religion as he please: for this the very heathen abhor to doe, for the heathen Romans in case of religion, did nothing but by the advise of the Pontifex Maximus, & his colleagues, Alexander Severus, and Augustus co^mmitted all such question of Religion, to the Colledg of their preists./

102.
Ambros. Epist.
33. ad Mar-
cellin soror.
2 Chron. xix.
11.

Causam fidei agendum in ecclesia quis abnuat, sayth Ambrose.

Good Johosophat when he prescribed to every one his office, yet the scripture sayth, he sett Amariah the cheife

preist over all the businesse of the lord, that is to iudge in all difficult ecclesiasticall causes.

The Emperours Honorius & Theodosius decreed that if any doubt did arise in questions of the Church, they must be reserved to a meetinge of preists and to their holy iudgment.

L. omni innovatione. cap. 6. de sacr. eccl.

Leonsius Bp. of Trypoly did worthylye reprehend the Emperour Constantius because he did too bouldly decide ecclesiasticall causes, and establish constitutions of the Church, by his owne will & minde.

Duar. ex hist. eccl.

And Eulogius, a priest of Edessa, did deride the Emperours governours, admonishinge them to ioyne wth the Emp: Valens in his religion, what, quoth he, hath the Emp: wth his Empire, gotten the Preisthood alsoe?

Theodor. lib. 4. c. 18.

Yett Kings must vse the advise & counsell of their Clergie in assemblinge Synodes, w^{ch} he must call, not to shew his owne/ power, but to establish the true faith.

Martian. orat. in Concil. Calced. 102 v^{er}m.

Constantine called the Councill of Nice and sate as cheif president of it, either alone as may be guessed out of Theodoret, or wth Hosias a Spanish B^p whom Cardinall Bellermino against all faith of History & subscription would haue to be the Popes Legate.

Theodor. lib. 2. c. 13.

And the same Constantine sealed and confirmed wth his owne authority, y^e acts of the B B^p or rules delivered in the publicke assemblies, as Eusebius speakes. the rest he left vnto the B B^p y^t had more full knowledg of all such questions.

Zosom. Tripart. hist. lib. 2. c. 1.

ffor if the Philosophers at Athens did not wthout cause laugh at the Proconsull Gellius, who promised his assistance

Euseb. lib. 4. de vit. Constantin. cap. 27.

Cicer. Leg. lib. 1.

for decidinge of their controversies : of w^{ch} he was very ignorant : soe noe doubt princes should make themselves ridiculous, if they should goe about to end controversies of divinitie, by their owne Braines.

Athan. in epist.
ad solitar. vit.
agent.

Ne nobis in hoc genere præcipe, sed ea potius a nobis discere : tibi deus imperium commisit : nobis ea qua sunt ecclesiæ concredidit : sayth Bishope Hosius to Constantine.

103.

If Princes will submitt their iudgments/ to the prescript of divines, & stand to their decision in controversies in divinity ; noe doubt their vnlearnednesse shalbe noe lett to composinge of controversies in their kingdomes, not by their owne knowledg, but by the consent of learned men.

All Kings are not vnlearned or vnwise, many are both, whose iudgment measured wth their learned Synode, is ever sufficient to stinte strife.

Cedren Zono-
ras, diacon.
in Anastas.
Nicephor.
lib. 16. c. 35.

The Sarracene Prince did of himselfe by a witty answer elude two Bishops of the Heresy of Eutiches : I haue receaved letters quoth the Kinge, y^e the Archangell Michael is dead ; w^{ch} when they denyed, to be possible ; howe then quoth he affirme the divinity to haue died ?

A Prince may not be iudg in causes of faith & religion, to determine, iudicio definitivo, what is sound divinitie ; & soe to impose his owne definitions ; for infallible positions of divinity : but iudicio executivo or Jurisdictionis, he may & ought to put in execution the determination & Cannons of/ the Church, & inioyne his subiects to professe & mainteyne the same both ministers & people.

103. v. 20.

- for scholes teach 1. } definition : to sett downe faith &
 that there is a two- 2. } beleefe to all is pper.
 fold Judgm^t } to god.
 namely of } Recognition, or traceinge out of
 the truth.
1. Discretive or assensive; to discern
 what is truth, by gods word &
 to yeild vnto it.
- The iudgm^t of 2. Directive; to guide others & lead
 recognition is y^m to the truth by instruction
 also threefold. 3. Descretive; to inioyne others to
 follow & to receaue the truth :
 suppressing errorr, & establishing
 the truth defined by the Church.

The third the decretive is in the prince and supream
 magistrate, both affirmatively, to binde all wth in his do-
 minion, Clergie & Laytie, to the observing of that w^{ch} is
 concluded by the Church: & negatively to suppress y^e
 contrary.

A prince then may iudg, for the truth, but not of the
 truth, by his owne iudgment.

He may & must establish gods truth, delivered by the
 true Church out of gods word; & confirme the rules &
 Cannons of Synodes provincially or generall. & confirme
 the creed and confession of faith; as did/ Constantine, 104.
 Gratian, Valentinian, Theodosius, and others.

King Reccaredus confirmed the decrees of y^e third
 Council of Toledo. Charles y^e great the Council of
 francfurt: Lodoveus haveing called and bin present in the

Councill of Orleance was in the end requested of the B^{ps} vt acta confirmaret sua autoritate, Anno Domini 506.

Soe was Theodosius intreated of the B B^{ps} that as he honored the Church by his letters, wth w^{ch} he called them together, soe also he would strengthen the finall conclusion of their decrees, wth his sentence & seale.

Tomo. 3 concil.
p. 439.

Pipin in the Councill of Suessons sayth : per consilium Sacerdotum & optimum, ordinavimus, constituimus &c.

✓ Ma^{tie} that conformes, doth also call generall & nationall Councills, w^{ch} ought not to assemble in any part of his dominions w^{thout} his authority.

Theodor. lib. 5.
c. 2. hist. eccl.

Pope Damasus did w^{thout} effect call the Bishops of the East to Rome, because he had noe power or authority to doe it.

Theodor. lib. 2.
c. 16.

Pope Liberius did but labour in vaine to call a Councill ag^t the Arrians, when y^e Emp: Constantius was one their side, & would not hear or grant the petition of Liberius./

104. 10730.

Neyther could Pope Eugenius bring the ffrench B B^{ps} to a Councill, when Charles the 7th did prohibite them to goe.

Evagrius. lib. 1.
c. 10, in breviar.
libertat. c. 12.

Pope Leo wth all his preists did wth sighing & teares beseech the Emperour to haue a Councill ag^t Dioscorus ; & did fall downe at the Emperours feet and with teares besought him.

Cusan. lib. 3.
c. 16. de consil.

Cardinall Cusan : saith that, it is to be knowne that in the 8 generall Councills I finde that alwaies the Emp: & his iudges wth the Senate had the primacie.

Princes haue also power to erect Vniversities & Colleges ; for to them it pteynes to hinder all vnlawfull

assemblies of w^{ch} maye come much perill to the State, if they be ill, much good if the[y] be good. many examples of all, or most vniversities, may be brought for prooffe heereof.

Cap: 7th

Of the power of Ma^{ty} in re
Nummaria

The 5th of the greater rights of Ma^{ty} is that w^{ch} it hath about money, for, sith in every State, there is great need & vse of exchange of things: & that exchange cannot soe fitly & equally/ be made, by giueinge one thing for another, 105.
as wheat for wine, shoes for a bedd &c. therefore necessity found out a third thinge, as Iron, brasse, silver, gould; w^{ch} was first defined & esteemed by quantity & weight, afterward by price, value & comon account after once it was coyned. And this is made the Comon measure of all things bought, sold, & exchanged, and it doth equall all things by makeing them Commensurabiles inter se.

ffor there cann be noe society w^{thout} pmutation, nor any pmutation w^{thout} equallity; nor any equallity w^{thout} commensuration. And in very truth, it is impossible to make things soe farr different from one another Commensurable and of equall value; but that necessity & need of some things more then other doth well effect it.

Money then becomes, for these reasons, the rule lawe and coñon measure of all thinges w^{ch} are possest in any State. wherevpon it is called νομισμα numisme a νόμω lawe; because lawe and constitution made it the publicke measure./

105 *verso*.

✓ Now as other lawes doe apperteyne to the power & pleasure of M^{tie}, soe also doth this of money; because it is the office of M^{tie} to provide, ne quid Respub: detrimenti capiat, that the State doe not suffer hurt, and also to see that the peaceable goſſm^t thereof be not troubled; w^{ch} cann hardly more easily be done by any thinge else then by mony.

ffor if the measure of things be changed or troubled, all other things must needs be changed & put out of order and course.

✓ All prices of things wilbe made vncertaine: mens renewes, meanes & possessions, wil become vncertaine; w^{ch} do increase or decrease of money: all covenants and bargaines wilbe come vncertaine: for he that made a bargaine to receaue or pay an hundred pounds after the value of powndes is increased or diminished; how much shall he require of his debtor, or pay to his creditor.

ffor this case is disputed diversly on both sides./

106.

ffor reason and law requires & commands, that things be repaid of the same price value & goodnes that they were lent and trusted: soe that the reason of the law doth bringe vs back to the tyme of the contract, and will haue vs to pay soe much money, as was sett downe in the contract; because it is to be probably supposed, that by mutuall agreement the bargaine was made of that w^{ch} was in value at the time of the bargaine makeinge, not of y^t w^{ch} in future tyme might be vncertaine.

Now in all contracts equality is best kept when neither part is defrauded or doth gaine by one another.

ffor he that should not receaue lesse ought not to aske more.

Wherevpon the constitutions of the Elector Augustus doe command that y^t money w^{ch} was agreed vpon in the bargaine makeinge, & the full value of it should be performed, wthout makeing any distinction, whether the money was altered outwardly in the value & price, or inwardly in the forme and matter.

Yett notwthstandinge the comon opinion/ is otherwise, ^{106 crowns.} w^{ch} doth hold that the tyme of the contract, and not of the payment must be respected in two cases.

1. If the money be changed in the weight and matter of it.
2. Iff besides the matter & weight, in the value & price of it also.

But if the price and estimacon shalbe lessend, the matter & weight abidinge y^e same that it was, then they giue the losse or profit to the creditor.

But however wee resolve of either opinion, it is plaine that the bargaine is ambiguous; and this doubtfullnes arises from nothing else but the altering of the money; w^{ch} also makes fines, mulcts, reuenues & wealth both publicke & private doubtfull & vncertaine.

If the law punish an adulterer wth an 100 Crownes, some thinke that the Crownes are to be esteemed, after the value they were at the law makeinge because lawes followes the nature of lost wills.

But other thinke fines are to be paid accordinge to the present estimacon because a new rate changes the necessity & nature/ of the old statute.

107.

x

And for this cause M^{te} to whom as to the cheif governour apperteynes the supream good of the State, must have authority to order this busines, as well as to coyne money; w^{ch} belongs to royalty: wherevpon the Persian Coyne was called Darici, the Macedonian, Philipæ, because it bore the image of Darius, Philip &c.

Procop. bell.
Goth. lib. 3.

But these persian and other barbarous princes would not indure their pictures vpon silver or brasse, but only vpon gould.

Albeit the Romans made noe scruple to putt their pictures vpon silver or brasse, as Matt: 22: ever it was an argum^t of royalty, to sett his picture on coyne.

P. Math. narr.
de pace. lib. 5.
nar. 2. N^o. 2.

And hence Marshall Biron was wont to say, that he would never rest, vntill he saw, Sa teste sur vn quart d'escu.

There were 2 signes & notes } purple, w^{ch} pteynes to orna-
of an Emperour } ment. money, w^{ch} did
argue his power.

And as other rights of Ma^{te} consist in him that hath supream power, so hath he power to alter money. yett a prince must not vse it, to the hurt of the Comon wealth; or preiudice of his subiects; nor for that he is bound by any speciall lawe, but because it is/ against law of nature, w^{ch} must giue a rule to all the actions of princes.

107 verso.

The old Romans made Moneta a Goddesse, w^{ch} did punish all deceit in money, & some hold that it is called Moneta, quod Moneat, that noe cousenage be comitted in coyninge of it, & for that it putts vs in minde of the weight, price, value, author &c.

Constantine shaps would be putt in minde heerof when he engraue vpon his coyne a man vpon his knees praying to god. Euseb. Vit. Constantin.

A prince Ergo though by his absolute power he may alter his coyne to the hurt of his people, to his owne private profit arising out of their losse: yett ought he in noe sort to doe it, as being against the lawe of nature, conscience & iustice, to wronge others; noe more then he may make lawes & pardon offenders wth preiudice of his subiects both w^{ch} yett are in the power of M^{ty} at his pleasure.

A prince though he cannot communicate the power of making lawes wth his subts yet may he giue them power to coyne: w^{ch} they may hold by grant or by prescription.

King Antiochus gaue Symon the Preist of the Jewes power to coyne money./

The Romans allowed the free Citties to coyne brasse; & silver money, but the stampinge of gould to themselves. 108.
Procop. lib. 3.
bell. Goth.

In ffrance the Duke of Burbon the Count of Nivers, Anioy, St. Paul &c haue power to coyne.

The prince of Orange, & Count of Avinion doe it as being absolute, & not vnder y^e King.

Soe in Germany & in Italy, every petty State, & many petty States, haue the power.

This being held by grant from his Ma^{tie} argues not Ma^{tie} but a ministry vnder Ma^{tie}.

The right of money consists in three things vizt. Lea. novell. 52.

}	εν τῇ μορφῇ—forme
}	εν τῇ ὡσὶ—matter.
}	εν τῇ ὥσιν—weight.

To w^{ch} Paul the lawyer adds the 4th w^{ch} is indeed the principall vizt. estimacōn & value; for in it consists the whole power of money; w^{ch} is worth soe much as it pleaseth Ma^{ty} it shalbe worth who may make Leather money as deer as gould.

Hato Armenius. Sue. hist. c. 1.

The Tartars of Catai vsed noe other money but of paper stamped wth the Kings Seale, w^{ch} when it waxed old they carried it to the Court, and receaved new for it.

Suidas in verb.

And the Romans before Numas tyme had noe money but of Leather & of shells.

108 verse.

✓ But if Princes be caused by necessity to/ coyne such money as very many haue been; yet are they bound to restitution of any losse that comes thereby to the receavers of it, as both lawyers & divines teach; when once that necessity is expired.

✓ Nothing setts price vpon gold or silver, but mans error. It is worth noe more then it is esteemed to be: It hath his rate from the State where it is current, & the Prince that hath Ma^{ty}.

Bellay.in Speine princip.

Yet the Kinge of Arragon hath not this absolute power over money, because at his Coronation he takes an oath, that he will not alter the antient coyne.

✓ But if a Prince doe alter the value of Coyne, it must ever be vpon iust cause; or else his doeing is vnlawfull. & whosoever he be that corrupts any current money, though it be not the proper coyne of the Kingdome, yett is he guilty of treason. as he that corrupts the money of any towne in the Empire, is held to corrupt the Imperiall

money. And Charles the 5th made noe distinction between the money of the Princes of the Empire & the Emperours, but punished the coyners or corrupters of both alike.

Finis Libri Secundi./





LIBER TERTIUS.

109.



HE rights of Ma^{tie} are twofold } greater
lesser

1. Greater are either	{	essentially	{	making lawes.	} lib. 2.
		namely the		Cap : 3.	
		rights of		governing y ^e State.	
				Chap : 4.	
				power of armes.	
				Chap : 5.	
		accessorie	{	power over re-	} chap. 6
		w ^{ch} are 2			
				power over money	

Of these we haue spoken in the second booke.

Now in this third booke we will entreat of lesser rights, w^{ch} doe not like these former, issue out of the essence of Ma^{tie} & include in them supream power: but w^{ch} doe rather apperteyne ad fisiam quam ad personam principis. And are rather priviledges of their dignity and high place

then rights of Ma^y as the right to weare purple, w^{ch} the Emp: Theodosius made Treason.

When Augustus had made a lawe y^t none but a Senatour or officer should weare purple, Nero seing a Matrone in the publicke spectacles cloathed in purple, commanded his officers to put her out not only of her purple, but of all her goods.

Dion. lib. 49.
Sweton. in
Nero. cap. 37.

Afterwards the vse of purple was transferd, only to the Cort of the Emp: & all dyeing & buying & selling of it was prohibited to private persons./

And nothing might be written in Purple but only the Emperours rescripts subscribed in purple letters, as also the ffrrench Kings vsed yellow wax in their Seales, w^{ch} King Lewys granted to Renatus Kinge of Naples as a great favour to vse yellow wax.

109. v. m.

The princes of the bloud of ffrance had a priviledge peculiar to the princes of the blood to weare longe haire, and none could be King that was once cutt or polled. hence it was that Clotildis the Queen would rather haue her Nephewes slaine then polled, because she knew that all hope of the Kingdome was taken away wth their haire.

Io. Tillius,
lib. 2. de reb.
Gallies. ✓
Gregor. Turon.
lib. 3. cap. 18.
Almond. lib. 2.
c. 12. Gell.
annal.

The ffrrench rebelling against their Kinge Theodoricke, put him out of y^e throne, and polled him: by w^{ch} they cutt off all his hope of being King any more.

Greg. Turon.
lib. 6. cap. 24.
Aymond. lib. 1.
c. 4.

But these are but priviledges of some States, and not proper to Ma^{te} w^{ch} may well be w^{thout} them, we will Ergo leaue them, & come ad Jura fiscalia, w^{ch} are Minora Regalia.

The foundation of these fiscall rights is y^t viz: that,

110. Maiestas est omnium rerum in rep: domina, & that, In principis/ potestate sunt omnia. & imperatorum licere omnia.

Plin. pane. 9.

1 Sam. viii.

Hence saith Plinie: Tantum principis est quantum omnium, And per legem regiam, there is giuen to Kinge Saul dominium power to take their sonnes and daughters, feildes vyneyards, olive servants flockes.

Daniel ii. 37. 38.

And Daniell most plainly. God hath given the a Kingdome, power, strength & glory, and wheresoever the Children of men dwell, the beasts of the field & the foules of the heauen, hath he giuen into thy hands, and hath made the ruler over them. Thus spake Daniel to the Kinge Nabuchodonozar.

Seneca sayth Jure civili omnia regis sunt, & yett these things the vniversall possession whereof pteynes to the Kinge are designed to severall masters & owners, and every thing hath his owne proper possessour. And therefore wee may giue to the Kinge horse or money &c. neither are wee said to giue him his owne, but to giue him of our owne. whereas if all were the Kings owne goods, we could not giue him but restore to him: but the rule is true. Rei suæ donatio nulla est, nec acquisitio. Yea/ every private man hath his owne proper goods and may haue an action against the Kinge himself.

110 uerba.

instit. de rer.
divisione in
princip.

And the Emp: himself doth assigne his owne proper goods to every private pson and places them extra *dispositum* suam, w^out his dominion as Theophilio translates it.

If all things did pteyne to the property of the Prince, he could then giue nothing away to his subiects, neither could

his subjects possesse any thing as their owne quia duorum in solidum dominium vel possessio esse non potest.

L. si vt certo.
5. § fin comod

Hether tends that of Tertullian : si omnia permissa sunt principi, quid erit dei If the Prince haue all what shall god haue.

Tertul. lib.
idolatr.

Thus also reasons Bucherius . si regis sunt omnia, ergo nihil possidetur a subditis : If all things are the Kings then cann the subjects possesse nothing at all. And by this very same argum^t doth Rossæus take from the Prince all dominion, & power over the goods of his subjects & leaues him only a bare Curator, guardian, Tutor, overseer of the Comon wealth, as guardian over his warde wth should haue care/ to keep and govern his estate, for the good of his pupill, over whom he is made Tutor, and soe is in place of a Lord over him ; accordinge to that of S^t Paul, Gal: 4. the heyre as long as he is a child differs nothing from a servant. And surely Pope John the 8th giues noe more to Kings, then to be administrators of secular dignities.

Bucher. lib. 2.
c. 20. de abdi-
cat. H. 3.

111.

C. administra-
tores. 23. 9. 5.

Also Alexander Severus names himself the Steward of the State ; houlding it a shame for the publicke Steward to spend prodigally what the subjects giue him for the publicke good.

Lamprid. in
Alex.

Maximus in his oration to the souldiers after his election, sayth : Nobis dispensatio tantu^m atque administratio Principatus, a nobiscum milites, demandata est.

Herodian. lib. 8.

Soe Charles the great, calls himself not dominus but Gubernator Imperii.

Vasq. lib. 1.
illust. 99. c. 20.

Pertinax the Emp. caused the Emperours name written

Herodian. in
Pertinac.

Y

vpon the publicke possessions to be scraped out; as if they did not apperteyne to him, but to the State.

But indeed there are two extreemes to be avoyded in this question as dangerous rockes/.

III *verse.*

1. one of flatterers, that giue to Kings absolut power, interest, and property in and over all his subiects, goods & lands.

2. the other that depriue them of all power and leaue them nothinge but the place of stewards, guardians, administrators; raking vp all authorities out of all authors or orations that doe tast either of too much flattery of the one side, or too much modesty on the other.

If y^e would then know, what is the right interest, & power both of Kings & subiects, over the subiects goods; & how all things are subiect to Ma^{ty}: the lawyers answear; when they doe assigne to every subiect to be a private lord over his owne goods and estate, ratione proprietatis in regard of propriety: but limitt the dominion of the Kinge, to Jurisdiction protection administration over them. Bulgarus is alledged and commended to be the author of this decision and distinction, for when Cæsar demanded of him, how all things were the Emperours, he made answear in regard of Jurisdiction.

Accursius in
proem. ff. in
verb. Sanction.

III.
Senec. benef.
7. 4. 5.

Jure civili, sayth Seneca, omnia Regis/ sunt, yet wth this distinction; ad regis potestas omnium pertinet, ad singulos proprietat. Omnia rex imperio possidet, singuli, dominio.

The subiects haue their propriety in their goods and possessions.

The Kinge, the power, Jurisdiction, pteccōn.

The Kinge is lord, & they owners of them.

All that are vniversally considered y^e publicke goods, as the goods or lands, of English, ffrench, flemings; are notwthstanding divided by private termination to speciall owners, who haue the propriety and true interest in them. And they are their princes and theirs, in diuers respects.

All things are gods, yett hath he giuen to every owner a proper right of that whereof he is a iust possessor: & this he houlds vnder & from god: and to take from him that w^{ch} he hath propriety in, is to robb and steale and to breake gods covenant.

Thus private and vniversall dominion doe stand well together.

The prince hath vniversall, and every private possessor, hath propriety and private dominion.

And that is true y^t Symmachus writes: viz.:/ Omnia Regitis, si suum cuiq; servatis.

112. v. 27. Symmach. lib. 10. ep. 54.

Your rule is iust and equall, if y^e fence in every mans propriety, that he may possesse his owne in peace vnder y^e. that every one may liue quietly vnder his owne vine; in his owne possessions, as the scripture speakes.

It is a law among the Scotts: Nemo fundum, agrum, prædium, alia quam Regis autoritate possideto.

Hector. Boet. lib. 12. hist. Scot.

And in England, all o^r Tenures are from the Kinge.

And that of Augustine is true in generall of every kingdome; vnde quisq; possidet quod possidet, nonne iure Imperatorio? Tolle iura Imperatorum, & quis audet dicere, mea est ista villa, aut domus hæc mea est: & infra noli dicere

August. tract. 6. in Johan.

Am 4

quid mihi & regi? quid tibi ergo et possessioni? per iura regum possidentur possessiones.

Yet this dominion of Kings takes not away the possession of private persons; because we must distinguish between the things that are possessed, comonly publicly, and vniversally, and privately of every one./

113. There is a threefold distinction
of dominion, or Lordship.

1. *Dominium iurisdictionis*, w^{ch} consists in rule and governinge.

2. *Dominium vniversitatis*, w^{ch} the whole or vniversall hath, about a Territorie, w^{thout} Jurisdiction and propriety.

3. *Dominium privatum*, w^{ch} brings wth it a propriety to the owners.

And yett it is soe farr of, that these three should hinder one another, that they may all w^{thout} absurdity well stand together.

Seneca. benef.
1. 4.

We call them the bounds of y^e Athenians or Campanes saith Seneca, w^{ch} y^e neighbours doe part and share amonge themselves, by private boundings. And the whole feild or Towne is but a part of the Comon wealth, w^{ch} yet hath severall especiall owners.

Pliny. paneg.

And Pliny saith prettely: *Ecquid Cæsar non suum videt*, yet *imperium principis quam patrimonium maius est*: yet greater is his power, then his patrimony his iurisdiction, then his possessions. for his patrimony & possession is in his owne private goods his power & Jurisdiction is in and over all his subiects goods/.

The naturall Philosophers do teach, that there is a two-^{113 worm.} fold intention of nature: vniversall and pticular. Perticular doth tend to y^e conservation of the individuum.

The other is directed to the conservation of y^e species.

By the first it were absurd if Appetitus materiæ primæ should rather desire the most vile forme of wormes, then the most noble forme of man. for every pticular desires his owne private good. Yet the vniversall that doth seeke the conservation of all kindes, will haue as well wormes as men: & doth ergo descend even to corruption, that the whole maybe kept safe, & may abide pfect in his species & pfection.

Even soe stands the case in the state polliticke, wherein every private master of a family vseth his wealth & goods to the conservation and mainteyninge of the family, w^{ch} is the end of oeconomie. But Ma^{ty} comminge in, and comprehending all things wthin the Compasse of the Comon wealth, doth reduce all things to the publicke profit; because wthout the safety of the publicke, noe private cann be safe, Ergo if in some case supreme power be compelled to lay hands vppon private goods: subiects must take it in as good/ part as things naturall doe when we see them^{114.} destroyed of the vniversall cause, least the vniverse should want his order and perfection.

But this must never be done, but in case of necessity and for the publicke good, to take from a part to save the whole thereby.

And as in a Democratie, the whole state resides in the power of the people, not in respect of bare administration

only, but also of dominion: soe also hath the Kinge the Comon wealth in his owne power, not as an administrat^r or guardian only, but as a father of the people, who may as oft it falls out, even by the lawes of y^r kindome, dispose, ordeyne and Determine of affaires of State and businesse of the kindome, at his owne pleasure; alwaies wth this proviso, ne publicam salutem lædat. yea many tymes haue Kings disposed of their kindomes as Attalus, Nicomedes, the King of Egipt, Augustus, Constantine & Charles y^e great Fredericke &c.

All this tends to shew that Kings are more then bare Tutors, guardians, stewards of their kindomes.

And yet in our State our Kings haue not the power of disposing their kindomes, / or alienating them from their right heires, as the forenamed Princes haue had, neither doe I beleue that these Kings could doe this wthout consent of the Peers & Kindome, vnlesse they had made such executors, as Attalus and Nicomedes did, vizt: the State of Rome w^{ch} had the best swords & could keep by might what these p^tended wills and testaments seemed to giue title of right vnto. I will giue y^e a reason of my opinion, out of the words of Attalus his will, when he had written only these words in his will: *populus Romanus bonorum meorum hæres esto*: the state of Rome who[se] might was able to assure a small right, & to make a silly title stable, would haue by the name of his goods his whole kindome to be ment. And indeed did enter vpon it, & kept it by this testament, wthout any other pretence of right vnto it.

114 verso.

Florus, lib. 2.
c. 10. Eutrop.
lib. 4. epist.
Liv. lib. 68.

Ma^y hath also power to stay suites, & for a tyme to hinder another to recouer his right, & giue ptection to debtors. to legitimate bastards to the preiudice of successors in fees: because that right w^{ch} consists in hope of succession cannot yet be numbered among our owne goods./

Gloss. in §
naturales si de
feud define ibid.
Baldus. n. 7.

defunct.

Ma^{tie} as it hath power impedire ius quærendum yet ius acquisitum tollere, non potest, nec debet. It was therefore an impudent pte of Pope Vrban to take away the Kingdom of Castile from Peeter that had rightly possest it a long tyme and to giue it to Henry his bastard brother. for if he had been an absolute Prince over Kings as he hath nothing to doe wth them in right, yet had this binn iniustice, vnless he meant to play Caligula or Nero, who in a wantones of Sovereignty would take mens goods from them at pleasure; & say, Hoc agamus ne quis quicquam habeat the speech of a very Tyrant.

115.
L. pretis rerum.
ff. ad L. falcid.
ffoisard. lib. 1.
cap. 230.

Suet. Calig.
cap. 141. &
Nero. cap. 32.

There is great difference to be made } Dominus, herus
between } &
Rex.

And soe between Imperium } herile
regium.

The first hath Sovereignty and property over both persons and goods.

The second a Kinge, hath noe property, but only Sovereignty over both.

The great Turke Tartar, Cham, Muscovite &c haue herile imperium And so the Turke if he send to a Basha & command him to send him his head, he dare not but

obey, else it will cost the liues & states of all his children and kinred.

115 verso.
Hatto armen.
hist. Tart.
L. 10

The great Cham haueing gotten the Empire/ of the Tartars doth not only putt all princes out of their Principallities vnder him, but also (that they may make prooffe of their ready obedience to him) he commands every one to kill his first borne sonn wth his owne hand, w^{ch} they dare not refuse to do: for that they doe hould him to be a prince sett over them by god from heauen.

✓ Now Kings haue noe warrant by their places to exercise this lordshipe or dominion over their subiects; vnlesse in some cases when necessity vrges for the safety of the State, as of a suddaine y^e cuttinge of a traitor or .p^{son} pestilent and dangerous to the State by violence when it cannot be done by ordinary course of Justice: as the maior of London did kill Jacke Cade in Rich: the 2nd tyme.

✓ Nay wee finde that these that haue had most absolute Empire gotten & kept by the sword tyrannically; yet durst not challenge p^{erty} in the goods of their subiects nor seaze vpon them at pleasure.

Achab that is sicke for Naboths vineyard, yet doth not vse his royall power, to take it to his owne vse, but vses a coulour of iustice most vniustly to condemne Naboth by false witnesse and soe to seaz vpon his goods as Escheated to the Kinge./

116.
Sueton. August.
cap. 56.

Augustus Cæsar was faine to make the forum arbiter because he durst not take y^e next adioyning howses from the owners.

When the people would haue manumitted a Stageplayer in Tiberius his tyme, the Emp: would not yeild his assent to their desire vntill such tyme as his master hauing received his owne price for him was content to free him.

Dion. lib. 57.

Leo the Emp: recalld servants that had entred into Monasteries, wthout the consent of their Masters. yea the very Cannons of the Church fetch them out.

Constit. 10.

There is good reason for this: for, quod nostrum est, sine facto nostro ad alium transferri non potest: & a prince may not doe any thinge, that is done vniustly.

Canon 1. & 2.
de servis ordinand. l. id q^d.
nostrum. 11.
ff. de R. 1.

Suum cuiq; relinquere, iubet jus(tit)ia et lex divina.

The law supposes, that these things cannot be done, w^{ch} are done vniustly & vnhonestly. for albeit all power is giuen to princes; yet none to doe euill, or to take away that w^{ch} is anothers, is giuen them, sayth Bartolus.

L. filius qui
fuit ff. de
condit. iustit. ✓

Because he is constituted a Kinge, to do iustice Ezech: 45. 9. 10. And magna regna nihil differunt a magnis Latrociniis sine iustitia.

August. lib. 4. d. 4.

Kings haue their power from god. but to sinn is neither, nor from god. It is not/ power, but Impotency, for sinn hath not an efficient but a deficient cause. And Princes may be vniust as well as other men.

116 vna. ✓

And the law of god in the tenth comādem^t Thou shalt not covet thy neighbours house. doth as well binde Kings as it doth subiects. The Lord sayth Ezech: 46. 18. The Prince shall not take of the peoples inheritance by oppression, or thrust them out of their possessions. but he shall giue his sonnes inheratance out of his owne possession.

And god thrust Achab & his issue out of the kingdome,

that had thrust Naboth & his sonnes out of their inheritance: & god did execute it by blood on them, as they had done it by blood on Naboth.

Some haue made an old distinction to coulor iniustice wthall in Kinges, teachinge that Civilliter acquisita may be taken from the subiect by the Prince; because forsooth Jus civile consistit in arbitrio principis.

But they say, that, naturalliter acquisita cannot be taken away be[cause] the prince, quia contra ius naturæ nequit dispensare.

But this is vntrue; for, howsoever Kings are acquired possessio semper est de iure gentium; lawfull possession is ever held, to be of the law of nations./

117.

Ambros. lib. 3.
off. cap. 4.

And a prince alwaies offends against iustice, when he takes from mee any thinge, w^{ch} is myne by lawfull right. And as St Ambrose saith; ubique naturam violat, qui alteri nocet, yea vbiq, contra naturam est, cum alterius damno ditescere; vnlesse what a prince doth take doe depend vpon his pure benefitt & good likeing. In w^{ch} case he ought not to vse the extent & extremity of his power wthout iust cause, least himselfe soe incurr the note of inconstancie, when he seemes to distroy his owne grants: for soe instead of a good turne he may doe an iniury; because, Adjuvari, & non decipi nos beneficio oportet. And investing one in a fee or office, there seemes to be a bande and contract, w^{ch} issuing from the law of nature, should not be vndone, but vpon reasonable cause. soe that a prince investing a Captaine in any fee, cannot deuest him wthout blame, vpon noe cause. yea though the

Paulus. L.
incomodato 17.
§. sunt in fin
comm.

fee be houlden vpon condition of doing psonall service; yea an orphan may pforme that service by a substitute, or by contributing soe much as may mainteyne an able pson for service.

117 *vers.*

And Leo the Emp: allowes men impotent/ by age or sicknes to giue a substitute.

And there is good reason for it: for affliccon should not be added to the afflicted: nec alicuius damna impu-
tari debet quod sine eius culpa evenit. It is vniust then for a King to take into his hands, the whole estate of an orphan or warde, for y^t he cannot pforme psonall service, sith orphanes & wards are reckned inter misera-
biles personas, quarum causa dicitur pia. And ergo both vnto them and widdowes did Val. Publicol. hold fitt, y^t all tribute should be remitted. And the Lawyers hold that if the state of the Tutor and pupill should chance to come into equall hazard, & both could not be defended, the Tutor is bound to preferr his pupills good before his owne: & ought to giue assistance to his pupills in iudgm^t before his owne sonnes, yea against them. But in this case of pupills & wards, Jus acquisitum non aufertur, sed acqui-
rendum ius suspenditur tantum; wth is in the princes power to doe. but yet the suspension seemes to be ioyned wth some iniury if a prince doe vse his power wth extremitie.

Plut. Publicat.

Gellius, noot.
alt. 5. c. 13
& Pet. Mosell.
annot.

118.

All that I haue said hitherto of y^e princes/ power over his subiects goods, doe limitt it wth this exception, he must haue a iust cause, that is the good of the publicke State. He must not excersice his prerogative over the goods of his subiects nisi in ordine ad salutem publicam; where the

Tacit. ann. 14.

safety of the State requires it, and then though some damage be done to private psons, yet the respect of the publicke good must dispence wth it.

Liv. lib. 2.
Halkarnas.
lib. 5.

That of Tacitus is true: Habet aliquid ex iniquo omne magnum exemplum quod contra singulos vtilitate publica rependitur. And ex iusta causa a regulis iuris receditur: especially in favour of the publicke State. for safetie whereof, a subiects private goods may, in specie may be taken from him. as slaves may be freed against the will of the masters; as we read Brutus gaue them libertie and in-franchizment in the Cittie, their maisters noe doubt muttering at it.

118 verba.

Soe for buildinge of a fortresse, or enlarging the Cittie ditches. the buildinge, or garden, of Cittizens may be taken & translated, to such publicke vses. A Castle also y^t/ would giue an advantage to the enemy, or be a receptacle for him, may be taken by the prince from the owner that is not able to keep it, & a garason may be put into it, and if it seems vnpossible to be defended, it may be rased & destroyed.

And private men must patiently sitt downe wth such losse, w^{ch} tends to the preservation of the publicke State.

2 Reg. xxiii.
35.

And if the State be not able to purchase peace in extremitie, they must exact vppon private mens estates, & take their goods to redeeme the safety of the whole wthall; and lay vpon heauy exactions, w^{ch} were most vniust in tyme of peace, but allowable in the extremity of the State. Thus the Kinge of Juda Jehoiakim exacted the Tribute that Pharao Necho layd vpon him, of his subiects, and made them pay it.

Yea King Asa tooke the treasures of gods howse to purchase safety therewth to his kingdome; w^{ch} had bin Sacri-
lege if necessity of State had not excused it. 1 Reg. xv. 12.

The like did Ahaz & good King Hezekia. for singu- 2 Reg. xvi. 2.
lorum facultates & copiz, divitiz sunt civitates. Cicero 2 Reg. xviii. 15.
offic: 3./

But is not the prince and State bound to make satisfac- 119.
cōn after, to private men, by whose goods soe taken,
they haue purchased the good of the publicke weale; and
to pay them againe the iust price of their losses?

Sure if the State be able to doe it afterward wthout
danger to the whole, equitie requires it should be done
by restitution & full amends. & that private men should
not be put to bear the publicke losse alone.

Tully hath an excellent story of the equall and honest Cicer. off. 2.
dealinge of Aratus of Sycion.

The City of Sycion had bene 50 yeares possessed of
Tyrants who had expelled the wealthiest and worthiest of
the City, and giuen their possessions to their owne favorites,
the limbes of Tyranny. Aratus came suddenly and secretly
vpon the Tyrant Nicocles, surpriseth him, & frees from
banishment 600 of the banished, that had been of great
estate and wealth. Now in this State thus freed, he findes
the goods and possessions of the exiles devolved to others
partly by inheritance, partly by purchase, or by exchange,
dowrie, &c./

In this case Aratus is perplexed and puzzeld; he sees he 119. *corra.*
cannot either take from the new possessours that w^{ch} they
haue inioyed so longe; neither yett leaue the old owners

vnsatisfied wthout iniurie to the one or the other. In the end to satisfie both, he obteynes of King Ptolomee great summes of money; wth these he redeemes the peace and concord of his countrey, appointing 15 cheif men of the State to whom he giues absolute power to determine this cause between all pties: & these fifteen sett a rate vpon all the possessions lost or deteyned, & gaue some money to quitt their possessions to the old owners or their heires; others money to be contented to lett them inioy that w^{ch} they had kept so longe. And by these meanes a peace was made between all pties & all suites were ended.

Liv. lib. 26.

The Romans also haueing taken much from private psons in the second punicke warr for the defence of the Comon weale, did when the warr was ended make them satisfac^{on} though they as yett had/ noe great store of money to spare; by selling the publicke lands of the State, to make payment thereby to their Creditors.

120.

Liv. lib. 31.

Tacit. ann. 1.

When Pius Aurelius a Senator complained that the weight of the high waies & the aquaducts had ouerthrowed his howses, & desired restitution of his damage out of the publicke treasurie; and when the Treasurers of y^e exchequer refused to giue him any amends, yet Tiberius the Emp: caused the price of howses to be payed him.

By this appeares, that a King hath more authority over his subiects goods, then a Tutor or Guardian hath, over his pupils estate; although it be true, that the Comon wealth is the Kings pupill. In many things the Kinge is like vnto a Phisitian whoe may burne or cutt a member

for the safety of the whole. yett may wee not measure by this office of a Phisitian the authority royall; and argue, that because a King is the phisitian of the Comon wealth, Ergo he may be cast/ off by his subiects at pleasure, as a Phisitian may be put away of a sick man for noe similies goe vpon fower leggs; but as they doe agree in some things, so also doe they differ in other some, else were they not similia but eadem: not like but the same.

✓
120 ewm.
Buchan. dialog.
rega. Scot.

We must also take heed of this extreme that wee doe not confound royall authority wth proprietie; as if the Kinge because he is supream lord of our lands and goods, might therefore alienate them at his pleasure, & dispose of them as he thinks good. for it is a rule in Lawe that *Rei suze quisq; est moderator et arbiter*. every one may dispose of his owne.

A Prince therefore may not alienate either the whole Comon wealth, or any pte of it, wthout the consent of those, who haue interest in the propriety, as he hath in the Soueraignty.

In this case he is in some sort in the case of a Tutor who may not alienate the goods of his pupill: or/ of a churchman, who may not passe away y^e goods of the Church: as beinge but in place of administrators, not of owners.

One sayth well, *Res regie dignitatis, non tam Regis sunt quam Regni./*

✓
Covar. p^o 2.
relect. c. quam-
vis pachi. § 2.
n. 4. de pach.
m. 6.



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